

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.202

(1)

CRA-S-349-SB-2005 (O&M)
Reserved on:18.01.2023
Pronounced on:03.05.2023

Gurcharan Singh

...Appellant

Versus

State of Haryana

...Respondent

(2)

CRA-S-374-SB-2005 (O&M)

Jarnail Singh

...Appellant

Versus

State of Haryana

...Respondents

CORAM: HON’BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Sahil Chaudhary, Advocate for
Mr. Gursharan Singh, Advocate,
for the appellant in CRA-S-349-SB-2005.

Mr. Nand Lal Sammi, Advocate,
for the appellant in CRA-S-374-SB-2005

Mr. Rajinder Kumar, DAG, Haryana.

N.S. SHEKHAWAT, J.

1. This judgment shall dispose of aforementioned two appeals as
the same have arisen out of a common judgment of conviction and order of
sentence dated 12.02.2005 rendered by the learned Additional Sessions

Judge, Yamuna Nagar, whereby the appellants, namely, Gurcharan Singh (in CRA-S-349-SB-2005) and Jarnail Singh (in CRA-S-374-SB-2005) were convicted for the offence punishable under Sections 395 read with Section 120 B IPC and sentenced to undergo rigorous imprisonment for a period of 03 years with fine of Rs.2,000/- each with a default stipulation. The appellant Gurcharan Singh was additionally convicted for the offence punishable under Section 412 IPC and sentenced to undergo rigorous imprisonment for a period of 02 years. Both the sentences of appellant Gurcharan Singh were ordered to run concurrently.

2. The brief prosecution story, as can be culled out from the report under Section 173 Cr.P.C., is that the complainant Jagjit Singh s/o Azaib Singh, Caste Jat Sikh, resident of Dera Jaggi, Manakpur, made a statement on 03.05.2001 to the police and alleged that at about 8.00/9.00 p.m. on 02.05.2001, he was present at his house and 8/9 persons were seen coming to his house on foot, in the darkness. He enquired about them and they stated that they had come from a distant place and wanted to take meals. They collected all his family members in a room and also went to the house of his brother Ranjit Singh with him and all the family members of his brother were also made to sit in the same room, where his family members were sitting and closed the door. Thereafter, they had broken the locks of all the boxes belonging to both of them, opened the boxes and took out the ornaments and the cash. While leaving, they also took away one tractor mark Farmtrac bearing Registration No.HR-02D-2561 along with trolley. After they had left, the complainant side had come out by breaking open the bolts and checked their belongings. They found that all the boxes were lying

open. On checking, it was found that one pair of gold ear-rings weighing one tola, three rings of gold weighing one and half tolas, one necklace weighing two tolas and about Rs.3,000/- in cash were missing from their house. Similarly, one golden necklace weighing two tolas, two bangles weighing two tolas, one tika weighing one tola and rings weighing one and half tolas, ear-rings one tola and the anklet (pajeb) weighing eight tolas of silver were found missing from the house of Ranjit Singh. The age of those assailants was between 35 to 40 years and were talking to each other in the local dialect. One of them was wearing khaki uniform, but they were all clean shaven except two, who were having the beard. They were having weapons i.e. country-made pistols and thereafter, the complainant went to the house of Dharm Pal, Ex-Sarpanch of village Manakpur and made a telephonic call to the police. On getting the information telephonically, the police reached at the spot.

3. During the course of investigation, other accused were also arrested and they confessed their crime in the police custody and also got the recoveries made. Co-accused Jeet Singh @ Jeeta was arrested on 30.03.2002 and during his interrogation, he disclosed the names of the present appellants as the conspirators for the commission of the crime. In the disclosure statement suffered by Jeet Singh @ Jeeta, it was alleged that the present appellants had conspired with them and had been instrumental in getting the dacoity committed from the co-accused as Gurcharan Singh, appellant, wanted to teach a lesson to the present complainant. Jarnail Singh, appellant, was in jail with Jeet Singh @ Jeeta and had engaged him to do the needful. Accused-appellant Gurcharan Singh was arrested and he suffered his disclosure statement, which led to the recovery of one ear-ring

from him. After completion of the necessary investigation, the challan was presented against both the appellants under Section 395 read with Section 120-B IPC and accused-appellant Gurcharan Singh was additionally charge-sheeted under Section 412 IPC in the competent court and the appellants denied the charge.

4. In order to prove the charge against the appellants, the prosecution examined 13 witnesses. The prosecution examined PW-1 HC Ram Mehar, who deposed with regard to the disclosure of the co-accused and was not relevant, so far as the case of both the appellants is concerned. Similarly, the statements of PW-2 Ramesh Chand, PW-3 ASI Des Raj and PW-4 HC Mewa Singh are not relevant for the disposal of the present matter as they had deposed the facts with regard to the confessions made by the other accused. Sapinder Singh s/o Ranjit Singh was examined as PW-5 and he also identified all the accused except the present appellants. From this, it can be inferred that as per him, the appellants were not present at the place of occurrence. PW-6 Jagjit Singh is the star witness of the prosecution and he supported the case of the prosecution, as mentioned in the FIR. He identified all the accused except both the appellants and Khalil, in the Court. PW-6 Jagjit Singh clearly stated that the present appellants and Khalil were not present at the time of dacoity. PW-6 Jagjit Singh stated that the disclosure statement Ex.PK of Gurcharan Singh was recorded in his presence, which was signed by him as well as by Dharam Pal as a witness. He further stated that Jarnail Singh was interrogated in his presence, who disclosed that Gurcharan Singh, appellant, told him to commit a dacoity and to arrange a person for the said purpose. Jarnail Singh also disclosed that he

was confined in jail with one another accused Jeet Singh @ Jeeta and he had called Jeeta at the house of Gurcharan Singh, so that the dacoity may be committed at the house of Jagjit Singh. He also admitted in his cross-examination that there was no specific identification mark on any of the ring. However, in the same breath, he stated that the ring, which was recovered from the accused Gurcharan Singh belonged to him. He further stated that there was a specific identification mark on that ring. He further admitted that he had a dispute with Gurcharan Singh, appellant, regarding trees standing in the agricultural land. He had got the demarcation of those trees done. But even after demarcation, the dispute was not settled and the civil litigation was still pending. The dispute was pending with regard to the trees one year prior to the date of commission of the dacoity. He disclosed the name of Gurcharan Singh at the time of lodging of the FIR, because he had suspicion about his involvement in the crime. The police interrogated Gurcharan Singh after calling him in the police station for many days, but at that time, nothing was disclosed by Gurcharan Singh to the police nor any clue was made available to the investigating officer. Thereafter, Gurcharan Singh, appellant, was let off by the police. The said witness further admitted that no public person was called by the police before effecting the recovery all the times. PW-7 Mohinder Singh, Inspector (Retd.), PW-8 ASI Dhoop Singh, PW-9 SI Chhatar Pal Singh and PW-10 Mohinder Pal were not relevant for the disposal of the present case, as they had stated facts with regard to other co-accused of the appellants. The prosecution further examined PW-12 Dharam Pal Singh, to whom the complainant had disclosed the facts about the dacoity at his house. He stated that on

31.03.2002 he along with Jagjit Singh, complainant, were called by the police in the CIA Staff, Yamuna Nagar and Jeeta was interrogated in his presence and Jeeta suffered a disclosure statement before the police. As per the said disclosure statement, Jarnail Singh remained with Jeeta in Central Jail and Jarnail Singh had called him to commit the above-said dacoity. Thereupon, Jarnail Singh and Gurcharan Singh both had shown him the house of Jagjit Singh and after the commission of dacoity, one ring was gifted to accused-appellant Gurcharan Singh. As per him, accused Jarnail Singh and Gurcharan Singh were interrogated in his presence. Gurcharan Singh, appellant, suffered his disclosure statement and in pursuance of the same, he got recovered one ring to the Investigating Officer, which was taken into possession by the police vide recovery memo, Ex.PK/1. However, in his cross-examination, PW-12 Dharam Pal Singh admitted that the ring recovered from Gurcharan Singh, appellant, was meant for wearing the same by men. There was no specific identification mark on that ring, from which it could be said that it belonged to Jagjit Singh, complainant. The ring was of ordinary nature as usually worn by the people. Even there was no identification mark placed on that ring, even at the time of recovery. He further admitted that Jagjit Singh, complainant, was the land owner in that village and he had purchased the land from Nirranjan Singh, brother of Gurcharan Singh, appellant and also from some other land owners. The complainant had shifted to this village about 10/12 years ago from Punjab and a civil suit was pending between the complainant and Gurcharan Singh, appellant/accused with regard to the right to harvest the Poplar crop. He further admitted that dividing *dole* (katcha boundary wall) between the

holdings of both of them had been demarcated many times by different Revenue Officers, but the dispute regarding existence of Poplar trees was not settled and the matter was pending before the learned Civil Court. He further admitted that Niranjana Singh, brother of Gurcharan Singh, had lodged a complaint in police station against his brother Ram Pal and others regarding the damage caused to them on his tube-well. He had also filed a complaint in the court with regard to that very incident. During that period, he had been Sarpanch of the village. PW-12 Dharam Pal Singh further stated that on the very first day, he was aware of the fact that this dacoity had been committed at the instance of Gurcharan Singh, appellant, and this fact was also disclosed to the police. However, Gurcharan Singh, appellant was never interrogated in his presence by the police nor he was associated in the investigation of the case prior to 31.03.2002.

5. The prosecution further examined PW-13 Lahori Lal, Inspector (Retd.), who was posted as Inspector in CIA (II), Yamunanagar at the relevant time. Accused/co-accused Jeeta @ Jeet was arrested by him on 30.03.2002. On 31.03.2002, accused Jeeta was interrogated and he disclosed the names of both the appellants to the police. He had also arrested both the appellants in the present case. However in cross-examination, he stated that there was no specific mark of identification on any of the recovered articles. He stated that the investigation of the case was handed over to him and at that time, Gurcharan Singh, accused-appellant, was not mentioned by the complainant or any other person as accused/suspected person nor he had summoned Gurcharan Singh, appellant for interrogation in connection with this case. He further admitted that

Gurcharan Singh, appellant was arrested on the day of making of disclosure statement by Jeeta, co-accused. There was no specific identification mark on the ring recovered from Gurcharan Singh, appellant. He further admitted that during investigation, this fact also came to his notice that there had been a long litigation between the complainant and Gurcharan Singh, appellant. However, he did not enquire about the fact of that litigation. He had arrested both the present appellants in the present case. He was told by Gurcharan Singh, appellant that he had inimical relations with the complainant of the present case. He further admitted that no recovery was effected from Jarnail Singh, appellant.

6. After the examination of the prosecution witnesses, the statement of accused-appellant Jarnail Singh was recorded under Section 313 Cr.P.C. and he stated that he was employed on daily wages with Gurcharan Singh, appellant and prior to that episode, the complainant and his associates had come to quarrel with his employer Gurcharan Singh, accused-appellant and gave him beatings in front of him. He intervened in order to save him. Because of this reason, the complainant and his associates had inimical relations with him and he had been falsely involved. Similarly the statement of Gurcharan Singh, appellant, was also recorded and he stated that his brother Niranjana Singh had sold his land to the complainant Jagjit Singh and due to this reason, a dispute arose between them with regard to cutting of standing trees on the *dole* (katcha boundary wall). On demarcation, those trees were found in his land and the complainant raised objection for cutting of those trees. Dharam Pal Singh,

PW-12 had deposed against him as he had filed a criminal complaint against his brother Ram Pal for causing damage to his tube-well. Jarnail Singh remained with him on daily wages for some time and once he had saved him from the clutches of the complainant and his associates and thus, his name had been falsely involved in the present case. Apart from that, the complainant and his family members had been challaned on his complaint in a hurt case, as they had caused injuries to his wife. No evidence was led by the accused in their defence.

7. I have heard learned counsel for the parties and with their assistance, I have gone through the trial Court record carefully.

8. Learned counsel for both the appellants argued that the impugned judgment is based on misappreciation of evidence as well as various pronouncements of the Hon'ble Supreme Court. They submitted that the appellants were falsely involved on the basis of the disclosure statement made by co-accused Jeeta, which was not admissible in evidence. Apart from that, it has been alleged by the prosecution that only one ring was recovered from Gurcharan Singh, which was not bearing any specific mark of identification. It was a normal ring, which was easily available to a common man and could be easily planted on the present appellants. Apart from that, PW-6 Jagjit Singh and PW-12 Dharam Pal Singh had admitted that the parties were inimical towards each other. Even PW-13 Lahori Lal, who was the Investigating Officer, also admitted the factum of enmity between the parties and also admitted that he had not conducted the investigation from that point of view. Thus, due to past enmity, the

appellants were falsely involved by the complainant in the case in hand. Learned counsel further submitted that there are serious discrepancies in the statements of various prosecution witnesses and the appellants are liable to be acquitted.

9. The submissions made by learned counsel for the appellants have been countered by learned counsel appearing on behalf of the State by contending that there were specific and serious allegations against both the present appellants. PW-6 Jagjit Singh had named both the appellants as the persons, who had conspired with the other co-accused and the offence was committed by them. Apart from that, even during the course of trial, sufficient incriminating evidence was available in the shape of the statements of PW-6 Jagjit Singh, PW-12 Dharam Pal Singh and PW-13 Lahori Lal. Learned State counsel further contended that in pursuance to the disclosure statement suffered by Gurcharan Singh, appellant, a ring was recovered, which had been identified by PW-6 Jagjit Singh belonging to him and there was sufficient incriminating evidence against both the appellants. Thus, he prayed that the impugned judgment of conviction may be upheld.

10. I have considered the rival submissions and find that the cases in hand deserve to be accepted for the following more than one reasons.

11. In the instant case, the FIR was got registered by PW-6 Jagjitt Singh by moving a complaint, Ex.PA to the police and on the basis of the same, the FIR Ex.PB was registered against 8/9 unknown persons, who had committed the dacoity in the house of Jagjit Singh and his brother Ranjit Singh on the night of 02.05.2001. The complainant admittedly had

witnessed the occurrence, however, in the FIR Ex.PB, no accused was named. It is also an admitted fact that the investigation was initially conducted by the local police, but it could not make any headway. Later on, the investigation was handed over to CIA (II), Yamuna Nagar, which conducted the investigation. During the course of investigation, co-accused Julkan @ Mulla was arrested on 08.01.2002, Naseem, co-accused, was arrested on 09.01.2002, Khalil Ahmad, co-accused, was arrested on 13.01.2002, Sharda Nand, co-accused, was arrested on 21.01.2002, Mashruf Yasin was arrested on 25.01.2002 and Tayab was arrested on 23.01.2002 in the present case. All the said co-accused suffered their respective disclosure statements in the custody of the police, which were duly exhibited during the course of trial and none of the said six co-accused had named both the appellants as their conspirators.

12. The offence in the instant case was allegedly committed on the night of 02.05.2001 and till 30.03.2002, the names of both the appellants had not surfaced anywhere during the course of investigation. However, after about 11 months, on 30.03.2002, the accused Jeeta @ Jeet was arrested and for the first time, in his disclosure statement Ex.PM, he had named both the appellants as the conspirators with all the above-named accused. It was stated by Jeeta alias Jeet Singh in his disclosure statement Ex.PM that both the appellants had shown the houses of PW-6 Jagjit Singh and his brother to Jeet Singh @ Jeeta and later on the dacoity was committed by the said seven co-accused. Prior to Jeeta alias Jeet Singh, neither the appellants were named by any of his co-accused nor their names cropped up during the

statements of various witnesses examined by the police of CIA (II), Yamuna Nagar. If the appellants had conspired with the co-accused and the appellants had shown the houses of victims to the co-accused, nothing prevented the other six co-accused, who were arrested prior to Jeeta @ Jeet Singh from naming the appellants as co-accused in the present crime. Thus, prosecution case is liable to be disbelieved outrightly on this sole ground alone.

13. Furthermore, as per the case of the prosecution, Gurcharan Singh, appellant, was arrested by the police on 30.03.2002 itself and he had suffered a disclosure statement Ex.PK, wherein he stated that he had received one ring as a gift from Jeeta @ Jeet Singh, co-accused and he could get the same recovered. In pursuance of his disclosure statement, Gurcharan Singh @ Kaka, appellant, got recovered one gold ring and a recovery memo Ex.PK/1 dated 31.03.2002 was prepared in this regard. It has been stated by the prosecution that since the recovery had taken place in pursuance to the disclosure statement made by Gurcharan Singh, it would be a legally admissible piece of evidence against him and he could be convicted on the strength of the same. However, I find no force in the said submission. In the present case, the prosecution examined PW-12 Dharam Pal Singh, in whose presence Gurcharan Singh had suffered the disclosure statement. He clearly stated in his cross-examination that the ring recovered from Gurcharan Singh was meant for wearing of men and there was no specific identification mark on the ring, from which it could be said that it belonged to the complainant. The ring was an ordinary ring and was usually worn by

the people and there was no identification mark placed on that ring even at the time of recovery. Similarly, PW-13 Lahori Lal, Inspector (Retd) also admitted that there was no specific mark of identification on any of the recovered articles. He specifically stated that there was no specific identification mark on the ring recovered from Gurcharan Singh, appellant. Consequently, there was no evidence in the present case to show that the ring, which was allegedly recovered from Gurcharan Singh, appellant, was stolen from the house of PW-6 Jagjit Singh and the same belonged to the complainant.

14. Apart from that, it is evident that the entire machinery was set into motion on the strength of the statement made by PW-6 Jagjit Singh, complainant and his statement was supported by PW-12 Dharam Pal Singh, Ex-Sarpanch of the village. However, from a perusal of their testimonies, it is evident that both the witnesses were wrongly believed by the learned trial Court. At the outset, PW-6 Jagjit Singh had not identified the appellants, who were present in the court and stated that they were not present at the time of dacoity. However, in his cross-examination, he admitted that he was having a dispute with Gurcharan Singh, appellant regarding Poplar trees. Thus, the stand taken by PW-6 was highly contradictory. Further, PW-6 stated that he had disclosed the name of Gurcharan Singh, appellant, at the time of lodging of the FIR, because he had suspicion about his involvement in the crime. He further stated that the police interrogated Gurcharan Singh after calling him in the police station for many days, but at that time nothing was disclosed by Gurcharan Singh to the police nor any clue was made

available to the Investigating Officer and he was let off by the police. Similarly PW-12 Dharam Pal Singh also deposed on similar lines and went on to depose that from the very first day, he was aware of the fact that the dacoity had been committed at the instance of Gurcharan Singh, appellant and this fact was also disclosed to the police. However, Gurcharan Singh, appellant was never interrogated in his presence by the police nor he was associated in the investigation of this case prior to 31.03.2002. The prosecution had examined PW-13 Lahori Lal, Retired Inspector, who was the investigating officer of the present case and he clearly stated that when the investigation of the case was handed over to him, the name of Gurcharan Singh, appellant was not mentioned by the complainant or any other person as the accused/suspected person and he had never summoned Gurcharan Singh, appellant for interrogation in connection with this case and he was arrested only on 31.03.2002. Even from a perusal of the FIR Ex.PB, it is apparent that the complainant was not aware of the real accused and the FIR was lodged against unknown persons. Had PW-6 Jagjit Singh and PW-12 Dharam Pal Singh, Ex-Sarpanch been aware of the names of the accused from the first day, they would have certainly incorporated the names of both the appellants as the accused in the FIR. Thus, it is evident that PW-6 Jagjit Singh, complainant and PW-12 Dharam Pal Singh, Ex-Sarpanch had stated wrong facts, while appearing in the witness box.

15. Now it is apparent that PW-6 Jagjit Singh and PW-12 Dharam Pal Singh, Ex-Sarpanch were already inimical towards the present appellants. PW-6 Jagjit Singh admitted in his cross-examination that he had

a dispute with Gurcharan Singh, appellant regarding Poplar trees standing in the agricultural land. He got the demarcation of those trees and even after demarcation, the dispute was not settled and the civil litigation was still pending between them. He further admitted that the dispute with regard to the trees was pending one year prior to the date of commission of the offence. Still further, PW-12 Dharam Pal Singh, Ex-Sarpanch was also inimical towards the present appellants. Even he admitted in his cross-examination that he had purchased the land from Niranjana Singh, brother of Gurcharan Singh, appellant and some other land owners. He further admitted that a civil suit was pending between the complainant Jagjit Singh and Gurcharan Singh, appellant with regard to the right to harvest the Poplar crop. He further admitted that a dispute was still pending between the parties with regard to the demarcation of the land and harvesting of Poplar crop. He further admitted that he had been a Sarpanch for about 10/12 years ago. Niranjana Singh, brother of Gurcharan Singh, appellant had lodged a complaint in police station against his brother Ram Pal and others regarding the damage caused by them to his tube-well. Thus, it is evident that PW-6 Jagjit Singh, complainant and PW-12 Dharam Pal Singh, Ex-Sarpanch were already inimical towards the appellants and the possibility of false implication due to the said enmity cannot be ruled out in the instant case.

16. In the present case, the only evidence against the present appellants was the confession made by Jeeta alias Jeet Singh, co-accused in police custody on 30.03.2002, whereby names of both the appellants

appeared in the present case for the first time, after 11 months of registration of the FIR by the police. However, the confession of the co-accused Ex.PM was not admissible in evidence, because there was no joint trial of the said co-accused Jeeta alias Jeet Singh with the present appellants and the confession of the co-accused is not a substantive piece of evidence. Even otherwise the confessional statement of Jeeta alias Jeet Singh was admittedly recorded after the arrest of the said accused on 30.03.2002 and even admittedly at that time, he was in police custody. Keeping in view the provisions of Section 25, 26 and 30 of Indian Evidence Act 1872 (for short 'the Evidence Act') such confessions were inadmissible, so far as the present appellants are concerned. Sections 25, 26 and 30 of the Evidence Act read as follows:-

“25. Confession to police officer not to be proved.—No confession made to a police officer, shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against

such other person as well as against the person who makes such confession.”

17. It has been held by the Hon’ble Supreme Court in **Indra Dalal Vs. State of Haryana 2015 (3) RCR Criminal, 342: 2015 (11) SCC 31**, as follows:-

“16. The philosophy behind the aforesaid provision is acceptance of a harsh reality that confessions are extorted by the police officers by practicing oppression and torture or even inducement and, therefore, they are unworthy of any credence. The provision absolutely excludes from evidence against the accused a confession made by him to a police officer. This provision applies even to those confessions which are made to a police officer who may not otherwise be acting as such. If he is a police officer and confession was made in his presence, in whatever capacity, the same becomes inadmissible in evidence. This is the substantive rule of law enshrined under this provision and this strict rule has been reiterated countless by this Court as well as the High Courts.

17. The word 'confession' has nowhere been defined. However, the courts have resorted to the dictionary meaning and explained that incriminating statements by the accused to the police suggesting the inference of the commission of the crime would amount to confession and, therefore, inadmissible under this provision. It is also defined to mean a direct acknowledgement of guilt and not the admission of any incriminating fact, however grave or conclusive. Section 26 of the Evidence Act makes all those confessions inadmissible when they are made by any person, whilst he is in the custody of a police officer, unless such a confession is made in the immediate presence of a Magistrate. Therefore, when a person is in police custody, the confession made by him even to a third person, that is other than a police officer, shall also become

inadmissible.

18. *In the present case, as pointed out above, not only the confessions were made to a police officer, such confessional statements were made by the appellants after their arrest while they were in police custody. In **Bullu Das v. State of Bihar, 1998(4) RCR (Criminal) 852 : (1998) 8 SCC 130**, while dealing with the confessional statements made by accused before a police officer, this Court held as under:*

"7. The confessional statement, Ex.5, stated to have been made by the appellant was before the police officer in charge of the Godda Town Police Station where the offence was registered in respect of the murder of Kusum Devi. The FIR was registered at the police station on 8-8-1995 at about 12.30 p.m. On 9-8-1995, it was after the appellant was arrested and brought before Rakesh Kumar that he recorded the confessional statement of the appellant. Surprisingly, no objection was taken by the defence for admitting it in evidence. The trial court also did not consider whether such a confessional statement is admissible in evidence or not. The High Court has also not considered this aspect. The confessional statement was clearly inadmissible as it was made by an accused before a police officer after the investigation had started."

18. The law of confession is embodied in Sections 24 to 30 of the Indian Evidence Act. The confession is a form of admission consisting of direct acknowledgement of guilt in a criminal charge. It would be appropriate to reproduce the observations of the privy council in the matter of **Pakala Narayana Swami Vs. Emperor 1939 PC 47**, which reads as under:-

“.....A confession must either admit in terms of an offence, or at any rate substantially all the fact which constitute the offence. An admission of a gravely incriminating fact, even if conclusively incriminating fact is not by itself a confession...”

19. The main question, which arises for consideration before this Court is whether the confession Ex.PM suffered by co-accused Jeeta alias Jeet Singh is admissible in evidence against both the appellants. Section 30 of the Indian Evidence Act mandates that to make the confession of a co-accused admissible in evidence, there has to be a joint trial. If there is no joint trial, the confession of a co-accused is not at all admissible in evidence and therefore, the same cannot be taken as evidence against the other co-accused. The confession was made by Jeeta alias Jeet Singh, who was tried earlier, and his confession is not admissible in evidence against the present appellants in view of the provisions of Section 30 of the Indian Evidence Act.

20. In the present case, PW-6 Jagjit Singh clearly admitted that both the appellants were not present at the place of occurrence. Even the prosecution had charged the appellants with the help of Section 120-B IPC. Section 120-A of Indian Penal Code defines criminal conspiracy and has been reproduced below for the facility of the reference:-

“120A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the

agreement is done by one or more parties to such agreement in pursuance thereof.”

21. It has been held by the Hon’ble Supreme Court in **State of Kerala Vs. P. Sugathan 2000 (4) RCR Criminal 369: 2000 AIR (SC) 3323 as under:-**

“11. Section 120B prescribes the punishment for criminal conspiracy which by itself is an independent offence, punishable separately from the main offence. The offence of criminal conspiracy can be established by direct evidence or by circumstantial evidence. Section 10 of the Evidence Act introduces the doctrine of agency and will be attracted only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable ground, that is say, there should be a prima facie evidence that the person was a party to the conspiracy before his acts can be used against the co-conspirators. This Court in Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra, AIR 1965 Supreme Court 682 held that the expression "in reference to their common intention" in Section 10 - is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law; with the result, anything, said, done or written by a coconspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Anything said, done or written is relevant fact only "as against each of the persons believed to be so conspiring as for the purpose of showing that any such person was a party to it". It was further held :

"In short, the section can be analysed as follows : (1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or

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more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour."

12. *We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of purpose in common between the conspirators. This Court in **V.C. Shukla v. State, 1980(2) SCC 665** held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when take together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with*

the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offences in furtherance of the alleged conspiracy.

13. *In **Kehar Singh v. State, AIR 1988 Supreme Court 1883** it was noticed that Section 120A and Section 120B Indian Penal Code have brought the Law of Conspiracy in India in line with English Law by making an overt act inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In case where criminal conspiracy is alleged, the court must enquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not to be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120B of the Indian Penal Code.*

14. *After referring to some judgments of the United States Supreme Court and of this Court in **Yash Pal Mittal v. State of Punjab, 1977(4) SCC 540; Ajay Aggarwal v. Union of India, 1993(3) RCR (Criminal) 34 (SC) : AIR 1993 SCW 1866; the Court in State of Maharashtra v. Som Nath Thapa, 1996(2) RCR (Criminal) 480 (SC)** summarised the position of law and the requirements to establish the charge of conspiracy, as under :*

"The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do so, so long as it is known that the collaborator would put the goods or service to an unlawful use."

22. After perusing the trial Court record and the evidence led by the prosecution, this Court is satisfied that the instant case, the charge of criminal conspiracy against both the appellants was not proved beyond the shadow of reasonable doubt. Admittedly, both the appellants were neither present at the place of occurrence nor admittedly they were associated during the process of commission of the offence of dacoity. The law is well settled that the offence of criminal conspiracy has to be established either by direct evidence or by circumstantial evidence and the ingredients of the offence have to be proved like any other substantive offence. The prosecution is obliged to prove that both the appellants had joined hands to commit the offence in question.

23. The learned trial Court wrongly convicted both the appellants with the aid of Section 120-B IPC by ignoring the settled principles that the

essence of conspiracy is that there should be an agreement between the persons to do one or other of the acts described in the Section. Such an agreement may be proved either by way of direct evidence or may be inferred from the act and conduct of the parties to such conspiracy. There is no difference between the mode of proof of the offence of conspiracy and proof of any other offence. Further, it can always be proved by direct evidence or by circumstantial evidence. The doctrine of agency is embodied in Section 10 of the Evidence Act and if the conditions laid by the said principles of law are satisfied, the act done by one is admissible against the co-conspirator. Section 10 of the Indian Evidence Act reads as under:-

“Section 10. Things said or done by conspirator in reference to common design.

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

24. Section 10 of the Evidence Act has been deliberately brought on the statute book in order to make the acts and statements of a co-conspirator admissible against the whole body of conspirators, because of the nature of crime. This Section will come into operation at the moment, when there is sufficient evidence before the Court that there are reasonable grounds to believe that two or more persons have conspired together to

commit an offence or an actionable wrong. A *prima facie* evidence has to be laid that a person was party to the conspiracy before his acts can be used against his co-conspirators. It has been held by the Hon'ble Supreme Court in the matter of ***Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra, AIR 1965 Supreme Court 682***, as follows:-

“8. Before dealing with the individual cases, as some argument was made in regard to the nature of the evidence that should be adduced to sustain the case of conspiracy, it will be convenient to make at this stage some observations thereon. Section 120A of the Indian Penal Code defines the offence of criminal conspiracy thus.:

"When two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy."

The essence of conspiracy is, therefore, that there should be an agreement between persons to do one or other of the acts described in the section. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence : it can be established by direct evidence or by circumstantial evidence. But Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the co-conspirators. The said section reads :

"Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention

was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

This section, as the opening words indicate, will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be a prima facie evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression "in reference to their common intention" is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law; with the result, anything, said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Another important limitation implicit in the language is indicated by the expressed scope of its relevancy. Anything so said, done or written is a relevant fact only "as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing

that any such person was a party to it". It can only be used for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be used in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy. In short, the section can be analysed as follows: (1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour."

25. In view of the above discussion and having given my thoughtful consideration to the submissions made by the learned counsel for the parties, I am of the considered opinion that the impugned judgment of conviction and order of sentence passed by the learned trial Court are based on misappreciation of evidence and unsustainable in the eyes of law. Thus, both these appeals succeed and consequently, the impugned judgment of conviction and order of sentence dated 12.02.2005 passed by the learned trial Court are set aside. The appellants are ordered to be acquitted of the charges framed against them. The bail bonds of the appellants stand discharged and they may be released forthwith from the custody, if not on bail and if not required in any other case.

26. Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial Court record be sent back forthwith. Pending application(s), if any, is also disposed of.

03.05.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO