



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-A-27-2021(O&M)

Date of Decision:-02.09.2024

State of Punjab.

.....Appellant.

Vs.

Hardeep Kumar @ Kalu & Anr.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Mohit Kapoor, Senior DAG Punjab for the Appellant.

JASJIT SINGH, J.

The present application under Section 378(3) of Cr.PC has been filed for grant of leave to appeal against the judgment of acquittal dated 05.03.2020 passed by Sessions Judge, Shaheed Bhagat Singh Nagar.

2. Stated briefly, the case of the prosecution is that on 11.10.2018, complainant Rakesh Kumar son of Ram Singh, got his statement recorded to SI/SHO Manjit Lal of Police Station Balachaur, to the effect that he was working as a Salesman in Choice Agro Private Limited, Kapurthala and was presently residing at Kapurthala along with his family. It was further stated by the complainant that his elder brother Ashok Kumar was residing at village Dugri Bet along with his family. His mother Vidya Devi alias Banso used to reside with him at Kapurthala for about 15 days and for the next 15 days, she used to reside in his (complainant's) kothi at village Dugri Bet Menka the daughter of his brother Ashok Kumar, aged about 10 years also

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used to reside with Vidya Devi alias Bariso during her stay at village Dugri Bet. It was further stated by the complainant that on 11.10.2018 around 2:30 p.m., he received a telephone call from Phabbo Devi his maternal aunt's mother-in-law, who informed that his mother had been murdered by some one. As per the complainant, on reaching village, he found that some unidentified persons, after entering into the Kothi, had killed his mother with the help of some sharp edged weapon. Further as per complainant, his niece Menka had told him that when at about 2 p.m., she came from the school, she had found her grandmother dead in the Kothi.

3. On receiving this information of the incident from the complainant Rakesh Kumar, the FIR was lodged and the investigations were launched. During the course of the investigations, accused Hardeep Kumar alias Kalu son of Rashpal and Kulwinder Kumar alias Roni son of Harbhajan Lal were nominated in the present case. Accused Hardeep Kumar alias Kalu was arrested in this case on 17.11.2018 and got recovered the weapon of offence and one earring, whereas, accused Kulwinder Kumar alias Roni was arrested in this case on 02.12.2018. During interrogation, accused Kulwinder Kumar alias Roni on the basis of his disclosure statement got recovered the gold ear ring belonging to deceased Vidya Devi alias Banzo. On completion of the investigation, challan against the accused was prepared and presented before the learned Ilqa Magistrate.

4. On commitment charges were framed under Sections 302, 397, 450, 201 and 411 of the Indian Penal Code.

5. In order to prove its case, the Public Prosecutor for the State got examined complainant Rakesh Kumar as PW-1, Ashok Kumar as PW-2, Sukhdev Singh as PW-3, LHC Usha Rani as PW- 4. Investigating Officer SI Manjit Lal as PW-5, HC Naresh Kumar as PW-6, HC Budh Ram as PW-7,

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SI Manjit Singh as PW-8, C- Kapil Dev as PW-9, ASI Balwinder Singh as PW-10, Phabbo Devi as PW-11, Gurcharan Singh Draftsman as PW-12, Another Investigating Officer Inspector Gurmukh Singh as PW-13, Dr. Charandeep Mauji as PW-14 and then closed the evidence.

6. On closure of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C., wherein all the incriminating circumstances, appearing against them in the prosecution evidence, were put to them. The accused pleaded their innocence and claimed false implication. However, no evidence was led by the accused in their defence.

7. Based on the evidence led the respondent/accused were acquitted by the court of Sessions Judge, Shaheed Bhagat Singh Nagar vide judgment dated 05.03.2020.

8. The learned Counsel for the applicant-State contends that the Trial Court had failed to appreciate the fact that cogent evidence had come on record by way of the testimony of PW-2 Ashok Kumar who had seen the accused Hardeep Kumar @ Kalu coming out of the house of the deceased having a *datar* in his hands. PW-3 Sukhdev Singh had deposed to the effect that Hardeep Kumar had made an extrajudicial confession before him, admitting to have committed the offence in question with his co-accused Kulwinder Kumar @ Roni. The recovery of the weapon of offence and one ear ring each had been effected from Hardeep Kumar @ Kalu and Kulwinder Kumar @ Roni. Though the case was based on circumstantial evidence, the chain of evidence left no doubt whatsoever that it was the accused who had committed the offence in question. He therefore, contends that leave be granted to file an appeal against the acquittal of the accused/respondents.



9. We have heard counsel for the applicant-State and have gone through the lower Court record.

10. In the FIR and in the first statement of complainant Rakesh Kumar, accused Hardeep Kumar alias Kalu has not been named to be the murderer of Vidya Devi. The alleged murder of Vidya Devi took place on 11.10.2018. Though PW-2 Ashok Kumar had submitted before the Court that he had seen the accused coming out of the gate of the house of Vidya Devi on 11.10.2018, having a sickle(Datri) in his hand and later on he came to know that the accused Hardeep Kumar alias Kalu had committed the murder of his mother Vidya Devi, the statement of PW-2 Ashok Kumar son of late Ram Singh and being the son of deceased Vidya Devi was recorded on 16.11.2018, i.e. after a gap of more than one month of the murder of Vidya Devi. No explanation has been given by PW-2 Ashok Kumar as to why he never got the above statement recorded to the police on 11.10.2018 regarding the falling ill of his calf and regarding the injection and glucose given by accused Hardeep Kumar alias Kalu to the calf and regarding his economic condition and regarding accused Hardeep Kumar alias Kalu coming out of his house having a Datri in his hand. Interestingly PW-2 Ashok Kumar has stated in his cross examination that his statement was recorded by the police on 16.10.2018, but no such statement of 16.10.2018 is available on the record. However, as discussed above, the statement of PW-2 Ashok Kumar was recorded by the police on 16.11.2018. Later in his cross examination PW-2 Ashok Kumar has stated that on 11.10.2018 when his brother Rakesh Kumar had arrived at the house of his mother Vidya Devi, he had told him (Rakesh Kumar) that accused Hardeep Kumar alias Kalu was seen coming out of the house along with Datri. At the same time, PW-2 Ashok Kumar being the son of deceased Vidya Devi, has stated that

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even he had told the above fact to Tarsem Singh and Sukhdev Singh on 11.10.2018 that the accused Hardeep Kumar alias Kalu was seen coming from the house of his mother Vidya Devi. Had PW-2 Ashok Kumar actually narrated the above fact that accused Hardeep Kumar alias Kalu was seen coming out of the house of his mother along with Datri in his hand, then PW-1 Rakesh Kumar (complainant) would have got recorded with the police that he was told by his brother Ashok Kumar that accused Hardeep Kumar alias Kalu was seen coming out of the house of his mother Vidya Devi having a Datri in his hand. Had PW-2 Ashok Kumar actually seen the accused Hardeep Kumar alias Kalu coming out of the house of his mother on 11.10.2018 with a Datri in his hand, he would have himself narrated the above fact to the police there and then. On the contrary, PW-2 Ashok Kumar has not explained why he kept the above fact close to his chest up till 16.11.2018, when his statement was ultimately recorded by the police. This conduct of a son makes his version doubtful. Therefore the story put forth by PW-2 Ashok Kumar that he had "last seen" accused Hardeep Kumar alias Kalu coming out of the house of his mother Vidya Devi with a Datri in his hand is not believable.

11. Yet another fact makes the evidence of last seen unbelievable. The initial investigation of this case was carried out by PW-5 SI Manjit Lal. This witness was a person, who had recorded the statement of the complainant on 11.10.2018 Ex.PA and then put his endorsement Ex.PA/1, on which formal FIR Ex. PA/2 was recorded. PW-5 SI Manjit has stated that after recording the statement of complainant Rakesh Kumar, he visited the place of occurrence and prepared the rough site plan and recorded the statements of the witnesses. Later on this witness became the member of the police party headed by PW-13 Inspector Gurmukh Singh. When PW-5 SI

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Manjit Lal was subjected to cross examination, he stated that when he along with other police Pr officials arrived at the spot, they came across/met Ashok Kumar PW-2 and Rakesh Kumar (sons of deceased Vidya Devi). This witness in his subsequent cross examination stated that when he asked Ashok Kumar (PW-2) regarding the occurrence then Ashok Kumar had stated that only Rakesh Kumar would be making a statement and accordingly, the statement of Rakesh Kumar was recorded. As stated above, PW-2 Ashok Kumar had stated that on 11.10.2018, ie. on the day of murder of his mother, he had seen accused Hardeep Kumar, alias Kalu coming out of the gate of his mother, having a Datri in his hand. Apparently in case PW-5 SI Manjit Lal had met PW-2 Ashok Kumar who had seen the accused coming out of the house of the deceased with a weapon then PW-2 Ashok Kumar would have stated the above fact to PW-5 SI Manjit Lal there and then.

12. As regards the extrajudicial confession made by the accused is concerned the record reveals that accused Hardeep Kumar alias Kalu was first time nominated by PW-2 Ashok Kumar on 16.11.2018. On 16.11.2018 itself even the statement of PW-3 Sukhdev Singh Lambardar of village Dugri Bet was also recorded, before whom accused Hardeep Kumar alias Kalu had allegedly confessed regarding the committing of the murder of Vidya Devi alias Banso. PW-3 Sukhdev Singh being the Lambardar of village Dugri Bet had stated that on 14.11.2018, accused Hardeep Kumar alias Kalu came to his house around 6:00- 6:30 p.m. and made a confession regarding committing of the murder of Vidya Devi alias Banso. PW-3 Sukhdev Singh had stated that accused had confessed before him that he had given treatment to the cattle, but they were not giving money to him and due to this reason, he had killed Vidya Devi with sickle (Datri). In his further



statement, this witness had stated that after committing the murder, accused Hardeep Kumar alias Kalu had stated that thereafter he had run away from the spot and he (Sukhdev Singh) should produce him before the police and help him out. This witness stated that he told the accused to come in the morning, but on the next day the accused never turned up. Further as discussed above, it was on 16.11.2018, this witness had got recorded his statement with the police. The statement of this witness is in the form of a "extra judicial confession" made by the accused. It is a well settled legal principle that an extra judicial confession is a weak piece of evidence and ought not to be relied upon without corroboration.

PW-3 Sukhdev Singh, before whom the alleged extra judicial confession was made, had nowhere stated that he was well acquainted with accused Hardeep Kumar alias Kalu. It is highly unlikely, that an accused would make such a confession to a person with whom he had no intimate relations. Further no attempt was made by this PW to produce the accused before the police or inform the sons of the deceased. No intimation was given to the police on 14.11.2018. Therefore, the extrajudicial confession cannot be believed.

13. As regards the recovery of the ear rings is concerned, the occurrence took place on 11.10.2018 and the FIR came to be registered on the same day. The offence under Section 392/397 came to be added only later on a supplementary statement of the complainant dated 15.11.2018. One ear ring has been shown to be recovered from Hardeep Kumar @ Kalu along with a *datar* on 18.11.2018 while another ear ring was shown to be recovered from Kulwinder Kumar on 03.12.2018. The recoveries of these ear rings are doubtful in view of the statement of PW-14 Dr. Charandeep Mauji who stated that the ears of the deceased were not pierced. Further, it



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is indeed surprising that Hardeep Kumar @ Kalu would hand over one ear ring to his co-accused when he could have very well sold both of them himself. This only goes to show that the recovery of the ear rings has been foisted upon the accused.

14. As regards the recovery of the *datar* is concerned PW-13 Inspector Gurmukh Singh has stated that the same was not blood stained. However, the report of the FSL is to the effect that the weapon had blood stains on them. This is also a significant discrepancy in the case of the prosecution.

15. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in ***Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427*** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

16. In view of the aforementioned discussion and keeping in view the law laid down in ***Kallu @ Masih & Ors. Case (supra)***, we find no reason to interfere with the well reasoned judgment of acquittal passed by the



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Sessions Court, Shaheed Bhagat Singh Nagar. Therefore, the application for seeking grant of leave to appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

September 02, 2024
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No