



CRA-D-200-DB-2004 (O&M)

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

CRA-D-200-DB-2004
Date of Decision: 17.03.2025

LACHHMAN & ANOTHER

... Appellant(s)

Versus

STATE OF HARYANA

...Respondent

CRA-D-598-DBA-2004

STATE OF HARYANA

... Appellant(s)

Versus

SANTRO

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. B.S. Bairagi, Advocate
for appellant No.1-Lachhman and
Mr. H.S. Randhawa, Amicus Curiae
for appellant No.2 in CRA-D-200-DB-2004.

Mr. R.S. Arya, Addl. A.G., Haryana
for appellant in CRA-D-598-DBA-2004.

JASJIT SINGH BEDI, J.

This order shall dispose of two criminal appeals i.e. CRA-D-200-DB-2004 preferred by accused-appellant Nos.1 & 2, namely, Lachhman and Chand Singh against the judgment of conviction and order of sentence dated 19/21.01.2004 passed by the Addl. Sessions Judge, Sonapat and CRA-D-598-DBA-2004 preferred by the State challenging the acquittal of Santro. However, for the sake of convenience the facts have been taken from CRA-D-200-DB-2004.

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2. The present appeals have been filed against the judgment of conviction and order of sentence dated 19/21.01.2004 passed by the Addl. Sessions Judge, Sonapat.

3. The FIR was registered on 01.02.2001, the judgment of conviction and order of sentence passed by the Addl. Sessions Judge, Sonapat is dated 19/21.01.2004, the appeal was filed on 25.02.2004 and the matter is being taken up for hearing now i.e. after a period of 21 years from the date of registration of the FIR.

4. The case of prosecution in brief is that on 01.02.2001, when the police party headed by SI Ram Avtar was on patrolling duty near the bridge of Khubru Jhal, complainant Hukam Chand met them and he made statement Ex. PJ. On the statement of Hukam Chand complainant, the present case was registered bearing FIR No.13 dated 01.02.2001 under Sections 302, 120-B IPC and Section 25 of Arms Act, P.S. Ganaur.

5. The complainant/ Hukam Chand alleged that he was a resident of village Sardana and an agriculturist. He had three sons, namely, Chand Singh, Anand and Sanjay. On 02.06.2000, his son Anand was murdered by his eldest son Chand Singh, his wife Santro and one Sandeep, who used to reside with Chand Singh. In that case, accused Chand Singh could not be arrested while his wife Santro after arrest was released on interim bail and resided in her parental house at village Didwari, whereas Sandeep accused of that case was lodged in the Jail. He further stated that his son Sanjay used to reside with him (complainant). On 31.01.2001 at about 5.00 p.m., his son Sanjay and his neighbour Lachhman s/o Devatia resident of the same village, went to the



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fields for irrigation of the land. They came back at about 6.00 p.m. At about 8.00 p.m., Lachhman again came to his (complainant's) house and asked his son Sanjay to accompany him to go to their fields again for irrigation. However, Sanjay refused. Then Lachhman insisted upon Sanjay to go to the field with him and he took his son Sanjay to the fields forcibly. At about 9.30 p.m., accused Lachhman came to the complainant's house in a dramatical way and stated that Sanjay had sustained bullet injuries. On enquiry, Lachhman could not give any satisfactory answer and left the place. After the receipt of the information, he (complainant) his daughter Roshni and nephew Om Parkash went to his field and there they called out to Sanjay by name. On this, they heard the cries of Sanjay. After proceeding further towards Sanjay in the field, at a distance of four killas from their field, he was found lying in the panchayati land near a water course. On reaching there, he enquired from Sanjay about the mis-happening with him, who stated that Lachhman accused had fired a shot at him. He saw his son Sanjay in the light of the torch who was having a bullet injury on his chest and back side. Blood was also oozing out of the wounds. Then they lifted Sanjay for taking him to the doctor. When they reached near the canal Sanjay succumbed to the injury. After that they brought the dead body to his house. A number of people also came there. He stated that Lachhman was a friend of his son Chand Singh and at his instance Lachhman had committed the murder of his son Sanjay by causing a bullet injury as deceased Sanjay was an eye-witness of the murder case of his other son Anand in which his son Chand Singh and his wife Santro were involved. In order to destroy evidence of the earlier case, accused Lachhman in



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connivance with accused Chand Singh and Santro had committed the murder of his son Sanjay.

6. After registration of the case, the police investigated the same and arrested the accused. On the basis of his disclosure statement, accused Lachhman got recovered a pistol alongwith one fired cartridge and two live cartridges. He also made an extrajudicial confession before PW13-Mohinder Singh who produced him before the police before his arrest wherein he stated that accused Chand Singh had supplied him the pistol and inspired him to kill Sanjay. Co-accused Santro was seen conspiring with accused Lachhman in the Court by PW15-Sheela. Accused Chand Singh and his wife Santro were also involved in this case alongwith accused Lachhman for the commission of the aforesaid offences.

7. All the accused were charge-sheeted for the offences punishable under Sections 120-B and 302/34 I.P.C. Accused Lachhman was also charge-sheeted for the offence punishable under Section 25 of the Arms Act. At the time of framing of charge, all the accused pleaded not guilty to the charge and claimed trial.

8. In support of its case, the prosecution examined PW1-Dr. Ramesh Sabharwal, PW2-HC Raj Singh, PW3-HC Jaipal, PW4-Constable Bhagat Singh, PW5-Dr. Ram Kishan Kataria, PW6-Dr. Ashwani, PW7-SI Amar Dass, PW8-Constable Suresh Kumar, PW9-Rohtash Kumar Patwari, PW10-Hukam Chand (complainant), PW11-Om Parkash, PW12-Inspector Jagdish Prashad, PW13-Mohinder Singh, PW14-Inspector Randhir Singh, PW15-Sheela, PW16-Jai Bhagwan Ahlmad, PW17-Jitender Sethi, Dy.



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Superintendent, District Jail, Rohtak and PW18-SI Ram Avtar besides tendering of the relevant documents Ex.PA to Ex. PR. After the evidence of the prosecution was closed statements of the accused were recorded under Section 313 Cr.P.C. in which they pleaded that they were innocent and had been falsely involved in the case. In support of their defence version, they examined Dr. Subodh Sehrawat as DW1 and Om Parkash, Booking Clerk of the Irrigation Department as DW2. Dr. Subodh Sehrawat was examined by the accused in their defence for obtaining an opinion regarding the possibility of death being caused immediately after receipt of the bullet injury in the circumstances of the case while Om Parkash, Booking Clerk was examined to establish the period of Varabandi about the land of complainant-Hukam Chand and others.

9. The gist of the prosecution evidence is as under:-

Dr. Ramesh Sabharwal was examined as Ex.PW1. He stated that on 06.02.2001, he was posted as M.O., MHC, Ganaur. On that day he medico legally examined Chand S/o Hukam Chand and Lachhman Singh S/o Devita. He did not see any internal or external mark of injury on the bodies of the said persons.

HC-Raj Singh was examined as PW2. He got conducted the autopsy on the dead body of the deceased.

PW3-HC Jaipal and PW4-Bhagat Singh were furnished their affidavits regarding link evidence.



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Dr. Ram Kishan Kataria, MO, MHC, Sonapat was examined as PW5. He conducted the postmortem examination of the deceased. He observed the following injuries on his person and opined as under:-

“1. Wound of entry:- a lacerated punctured wound of circular shape of 1 cm. Diameter with inverted margin with a collar of abrasion and blackening around the wound. Wound was located on back of right chest. 3 cm. lateral to midline at the level of interior angle of right scapula. An area of blackening (singing measuring 5.07 cm. into 3.5 cm. around the wound. Corresponding holes were present in jacket, shirt and banian.

On dissection, skin and soft issues were found infiltrated with blood. Intercostal muscles and weasels were lacerated. Further exploration, wound was extended through chest wall, right flora and right lung (middle lob and then upper lob) entering in the anterior chest wall in the third intercostal space as a wound of exit. Right lung was collapsed right thoracis cavity was full of blood.

Wound of exit lacerated wounds of circular shape and diameter of 2 Cms. with everted margins in third intercostal space. Maemomatoma was present underneath the tissues. Intercostal muscles and weasels were lacerated. We had also observed corresponding holes in the jacket, shirt and the Banian of the deceased. The clothes were also having



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clotted blood. The other organs of the deceased were pale and healthy.

The cause of death of the deceased in our opinion was haemorrhage and shock as a result of firearm injury to the vital organs described above. The injuries were ante-mortem in nature and was sufficient to cause death, in the normal course of nature. Handed over to the police the following:-

1. A well stitched dead body after postmortem examination.
2. Duly signed copy of the postmortem report.
3. Police papers numbering 01 to 16 duly signed by us.
4. Sealed packet containing the clothes of the deceased.
5. Sample seal.
6. Ex.PG is the correct carbon copy of PMR prepared by us in the same process. It bears my signatures and that of Dr. R.N. Tehlan, Ex.PG is in my hand. ExPG/1 is the Inquest report. It bears our initial on each page. Ex.PG/2 is the police report for conducting the post mortem examination.

The time elapsed between the injury and the death was within two hours whereas in between death and postmortem examination was 6 to 6.30 hours. (At the stage of sealed parcel bearing the seals of FSL, Madhuban is opened it found to contain the clothes of the deceased) Shirt Ex.P1, Pant Ex.P2, Banian Ex.P3, Jacket Ex.P4, Underwear Ex.P5 and another pant Ex.P6 are the same clothes removed by us from the dead body of Sanjay (deceased).



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Dr. Ashwani, MO GH Sonapat was examined as PW6. He stated that he had radiologically examined the dead body of the deceased. The X-ray examination did not reveal any radio opaque metallic density and nor he did observe any fracture in the chest.

SI Amar Dass was examined as PW7. He stated that on 01.02.2001, he received a ruqa Ex.PJ from ASI Ram Avtar through constable Surinder with the endorsement Ex.PJ/1 and he recorded the formal FIR Ex.PJ/2. He also deposited the special report with the senior police officers and sent the said report through constable Suresh Kumar to the Illaqa Magistrate.

Suresh Kumar, Constable was examined as PW8 and stated that on 01.02.2001, he delivered the special report to the higher police officials and also to the Illaqa Magistrate at 08.45 AM on 01.02.2001.

Rohtash Kumar, Patwari was examined as PW9. He stated that he prepared a Akas Shijra Ex.PK on the identification of Hukam Chand S/o Sadhu Ram.

Hukam Chand was examined as PW10. He stated that accused Chand was his son and Santro was the wife of Chand. Lachhman accused was a resident of his village. His other son Anand had been murdered by Chand, Santro and one Sandeep. Sanjay (deceased) was also his son. On 31.01.2001 his son Sanjay had gone to the fields at about 05.00 PM along with Lachhman in connection with irrigation by the canal water. They returned at about 06.00 PM. At about 7/8 PM, Om Parkash son of Bhana and his daughter Roshni along with him were sitting in the front of their house. Lachhman Singh

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accused came and insisted that Sanjay should accompany in connection with irrigation of the land but he rejected this proposition. However, on the insistence of Lachhman Sanjay accompanied him at about 08.00 PM. At about 09/9.15 PM Lachhman Singh came running from the side of the fields and when he was passing near their house, he exhorted that Sanjay had received bullet injuries. He did not disclose the name of the assailant and went away. Then he along with Om Parkash and Roshni went towards the fields and found Sanjay screaming. Sanjay disclosed that Lachhman Bairagee had fired the shot at him and ran away. When they were shifting Sanjay to their house, he succumbed to his injuries near the canal. He suspected that Lachhman had good terms with Chand Singh who was an absconder in another case of the murder of his son Anand and they had hatched a conspiracy to eliminate Sanjay as he was a witness in murder case of Anand. His statement was recorded at 12.30 AM while he was going to the Police Station and the police met him at Khubru Jhal Police Post.

Om Parkash was examined as PW11. His version is similar to that of PW10-Hukam Chand. In addition, he was a witness to the recovery of a pistol Ex.P1 and cartridge Ex.P2 purportedly at the instance of Lachhman.

Jagdish Parshad, Inspector, SHO P.S. Ganaur was examined as PW12. He stated that on 05.02.2001, he had arrested Chand Singh on the basis of secret information whereas Lachhman was produced by Mohinder Singh (PW13). On the basis of the disclosure statement of Lachhman, he got recovered one pistol along with two live cartridges and one empty cartridge from near the bridge of the canal on 06.02.2001. From accused Chand Singh,



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a spring actuated knife was recovered for which a separate case under the Arms Act was registered against him.

Mohinder Singh was examined as PW13. He is the brother-in-law of the deceased Sanjay (the sister of Mohinder Singh was married to deceased Sanjay). He stated that on 05.02.2001 accused Lachhman came to his house and confessed before him that he had fired upon the deceased on the asking of Chand Singh. Initially he had refused to do so but on the allurements of Chand Singh who supplied the weapon and ammunition, he committed the offence and asked this witness to produce him before the Police. Thereafter, he produced Lachhman before police officials on 05.02.2001.

Randhir Singh, Inspector, SHO, P.S. Ganaur was examined as PW14 and submitted the report under Section 173 Cr.P.C.

Sheela wife of Karan Singh was examined as PW15. She stated that Santro was her sister-in-law (Bhabhi) being the wife of Chand Singh accused who was her real brother. She knew Lachhman as he belonged to her parental village. On 31.01.2001 she had gone to the Sonapat Courts and had seen accused Santro and Lachhman. Santro was telling Lachhman that he had to do job for the sake of his friend Chand Singh. Lachhman assured her that he would do the job today itself. On seeing her, they became silent. She returned to her village. Initially she had thought that Santro and Lachhman were talking about some personal work but later on after the murder of Sanjay, she suspected that they were talking about the elimination of Sanjay by hatching a conspiracy.



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Jai Bhagwan, Ahlmad was examined as PW16. He stated that the District Magistrate, Sonapat had accorded sanction for launching prosecution against Lachhman vide a sanction order Ex.PP.

Jitender Sethi, Dy. Superintendent, District Jail, Rohtak was examined as PW17. He stated that as per his record Santro wife of Chand Singh was confined in their jail. A case FIR No.159 dated 04.06.2000 under Sections 302/201/34 IPC, P.S. Ganaur was registered in which Santro was released on interim bail w.e.f. 30.12.2000 to 11.01.2001. She was to surrender on 12.01.2001 but instead surrendered on 31.01.2001.

SI Ram Avtar, Incharge Khubru Jhaal was examined as PW18. He stated that he had recorded the statement of the complaint Ex.PJ and made his endorsement Ex.PJ/1 and sent the same to P.S. Ganaur through constable Surinder on the basis of which formal FIR Ex.PJ/2 was recorded by SI Amar Dass. He accompanied the complainant to his house where the dead body of deceased Sanjay was lying and prepared the rough site plan Ex.PQ. He also conducted inquest proceedings Ex.PG/1 and sent the body for postmortem examination to GH, Sonapat vide application Ex.PG/2. He went to the place of occurrence and prepared a rough site plan Ex.PR. He also took into possession a sealed parcel containing the clothes of the deceased vide memo Ex.PD. During the course of investigation, he arrested Santro on 24.03.2001. He also recorded the statements of various witnesses.

10. The gist of the defence evidence is as under:-

Dr. Subodh Sehrawat, Hehrawat Hospital, Sonapat was examined as DW1. He stated that on seeing the postmortem report of Sanjay Ex.PG it



was possible that the deceased had died within a few minutes of suffering the injury in question. He also stated that the duration between the injury and the death as given in the postmortem is the maximum possible time and due to the shortage of blood, the injured could not have walked.

Om Parkash, Canal Patwari was examined as DW2. He stated that the Varabandhi of Hukmi Chand and Norang was on Thursday between 11.50 Am to Wednesday 02.10 AM. According to the Varabandhi, Teku son of Man Singh was entitled to receive water for irrigation on Wednesday from 01.40 PM to 12.20 AM.

11. Based on the evidence led, Santro (accused/respondent in CRA-D-598-DBA-2004) wife of Chand Singh came to be acquitted whereas accused Lachhman and Chand Singh (appellant Nos.1 and 2 in CRA-D-200-DB-2004) came to be convicted and sentenced by the Court of Addl. Sessions Judge, Sonapat vide judgment and order of sentence dated 19/21.01.2004 as under:-

Name of Convicts	Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
Chand Singh	302 IPC R/w 120-B IPC	Life imprisonment	Rs.5000/-	----
Lachhman	302 IPC R/w 120-B IPC	Life Imprisonment	Rs.5000/-	RI 01 year
	25 Arms Act	RI 01 year	Rs.1000/-	RI 03 months

All the sentences were ordered to run concurrently.

12. It is the aforementioned judgment, which is under challenge, in the present appeal.



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13. The learned counsel for the accused/appellant No.1-Lachhman contends that the version in the FIR of the deceased going with the accused despite the complainant stating that the accused was a friend of his son Chand Singh who had murdered his son Anand in an earlier occurrence and is also an accused in the present case does not seem plausible. The allegations of the accused having allegedly committed the offence and then going back to the village to inform the complainant party that some other person had committed the offence is absurd inasmuch as the accused could have very well run away from the spot. He further contends that the question of the deceased making an oral dying declaration before the complainant/Hukam Chand (PW10) about the accused Lachhman having fired at him cannot be believed. In fact, had Lachhman fired upon the deceased, he would have made sure that he had died and would not have left him in an injured condition. As regards the recovery of the weapon, he contends that the same has been foisted upon the accused Lachhman. Even otherwise, the recovered weapon has not been matched with any empty cartridge recovered from the spot. The cartridge was found in the weapon itself and the bullet had gone through the body. Therefore, the FSL report also does not further the prosecution case. As regards the extra-judicial confession, he contends that it was a weak piece of evidence and cannot be relied upon specially when it is made to a close relative of the deceased. He therefore prays that the present appeal be allowed and the accused/appellant No.1 be acquitted of the charges framed against him.

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14. The learned Amicus Curiae for the appellant No.2-Chand Singh contends that as per the prosecution case, Chand Singh and his wife Santro along with one Sandeep had committed the murder of Anand, another brother of Chand Singh in which Sanjay (present deceased) was a witness. Therefore, he had been murdered. The said motive in the absence of any other evidence is not sufficient to inculcate the accused. Further, the deposition of Sheela (PW15) that she had over heard Santro talking to Lachhman does not further the prosecution case to establish conspiracy. Even otherwise, Santro had been acquitted. The extra-judicial confession made before PW13-Mohinder Singh by Lachhman in any case cannot be read in evidence against accused Chand Singh. He thus prays that the present appeal be allowed and the accused/appellant No.2 be acquitted of the charges framed against him.

15. On the other hand, the learned State counsel contends that there is firstly, the evidence of the complainant and Om Parkash having seen the deceased in the company of Lachhman. There is the oral dying declaration of the deceased made before the said witnesses. Lachhman made an extra-judicial confession before PW13-Mohinder Singh. The recovery of the weapon of offence was effected from him. Further, Sheela (PW15) had heard accused Lachhman talking with Santro on the day of the occurrence. He, therefore, contends that there was sufficient evidence to inculcate not only both the appellants in the murder of Sanjay but also Santro, the acquitted accused. He, therefore prays the present appeal was liable to be dismissed and the State appeal was liable to be accepted.



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16. We have heard the learned counsel for the parties and gone through the record.

17. A perusal of the deposition of PW10-Hukam Chand/Complainant and PW11/Om Parkash would reveal that as per the prosecution case, the deceased accompanied the accused to the fields at about 05.00 PM in the evening and came back at about 06.00 PM. At about 7/8 PM, on the insistence of the accused and despite the opposition of the complainant, the deceased once again accompanied the accused to the fields. Later at about 9/9.15 PM, the accused ran past the house of the complainant shouting that someone had shot at the deceased. Subsequent thereto, these two witnesses along with Roshni D/o Hukam Chand went to the place of occurrence in the field in search of the deceased who informed them that it was the accused who had fired the shot at him. Thus, from these two statements the evidence of 'last seen' of the accused with the deceased stands established. Further, the statement of the deceased to PW10-Hukam Chand and PW11-Om Parkash that the accused Lachhman had shot him would amount to an oral dying declaration because soon after making the statement he succumbed to his injury while he was being shifted to the hospital.

18. The Hon'ble Supreme Court in **Kamal Khudal Versus State of Assam, 2022(3) RCR (Criminal) 979** in the context of the evidentiary value of an oral dying declaration has held as under:-

5. Upon registration of the FIR, the investigation started. The investigation revealed that the co-accused Munna Bhoi was running a liquor (local) factory situated adjacent to his paddy field. The deceased after working for sometime in the paddy field



accompanied the accused persons to the liquor factory. Something went wrong while the accused persons and the deceased were in the liquor factory. The locals working in the vicinity of the liquor factory heard some commotion coming from the liquor factory. After sometime, the locals saw the deceased coming out of the factory with burn injuries on his body. One of the prosecution witnesses Hanu Khetrapal (PW-2), who was present in the nearby agricultural field, enquired with the deceased as to what had happened. At that point of time, the deceased is said to have informed the PW-2 that the accused persons had poured hot lali (raw material used for preparing local liquor) on his body as a result of which he had suffered burn injuries. Saying so, the deceased left and thereafter his dead body was recovered from the drain of Duribam Tea Estate.

21. The law regarding the nature, scope and value as a piece of evidence of oral and written dying declarations is now fairly well settled by various judicial decisions of this Court. A dying declaration, oral or written, before it could be relied upon, must pass a test of reliability as it is a statement made in the absence of the accused and there is no opportunity to the accused even to put it through the fire of cross examination to test its genuinity or veracity. The court has, therefore, to subject it to close scrutiny. But once the court is satisfied that it is a truthful version as to the circumstances in which the death resulted and the persons causing injuries, the law does not expect that there should be corroboration before it can be relied upon. However, if there are infirmities and the court does not find it safe to base any conclusion on it without some further evidence to support it, the question of corroboration arises.

22. We may refer to one of the decisions of this Court in the case of Heikrujam Chaoba Singh v. State of Manipur, (1999) 8 SCC 458, wherein in para 3 this Court observed as under:



"3. An oral dying declaration no doubt can form the basis of conviction, though the Courts seek for corroboration as a rule of prudence. But before the said declaration can be acted upon, the Court must be satisfied about the truthfulness of the same and that the said declaration was made by the deceased while he was in a fit condition to make the statement. The dying declaration has to be taken as a whole and the witness who deposes about such oral declaration to him must pass the scrutiny of reliability. ..."

23. *"Truth sits upon the lips of a dying man."*

- Matthew Arnold

24. *The whole idea of accepting a statement in the name of dying declaration comes from a maxim "Nemo moriturus praesumitur mentire" which means that a man will not meet his maker with a lie in his mouth. It is believed that when a man is at the point of death and when every expectation of this world is gone, it hushes away every motive of lie.*

25. *In our view, the oral evidence of the PW-2, namely, Hanu Khetrapal is quite natural. On the day of occurrence, he was working in his agricultural field. His presence in his field could be said to be natural. There is no good reason for Hanu Khetrapal (PW-2) to come before the trial court and depose falsely against the accused persons. It is not even the case of the accused appellant herein that Hanu Khetrapal (PW-2) had some axe to grind against him, including the other co-accused and, therefore, fabricated the entire story of an oral dying declaration. Besides the same, the oral dying declaration of the deceased made before Hanu Khetrapal (PW-2) stands corroborated with the medical evidence on record. The medical evidence on record would suggest that there were 75% burn injuries on the chest of the deceased. The burn injuries were suffered by the deceased as the accused persons are said to have poured hot lali (raw material used for preparing liquor)."*

(emphasis supplied)



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19. The depositions of these two prosecution witnesses is supported by the medical evidence. Dr. Ram Kishan Kataria (PW5) has categorically stated that there was a time gap between the injury and death. The deposition of DW1-Dr. Subodh Sehrawat does not come to the aid of the defence as the evidence of this witness is based only on the postmortem report and not physical examination of the deceased. Therefore, the deceased was certainly in a position to make the dying declaration before these two prosecution witnesses to the effect that accused Lachhman had shot at him.

20. A combined reading of the depositions of PW10-Hukam Chand, PW11-Om Parkash and PW5-Dr. Ram Kishan Kataria will leave no doubt whatsoever that the deceased was alive and in a state of mind to make the said oral dying declaration.

21. It would be relevant to note here that the prosecution version as set up by the complainant in the FIR is prompt. The occurrence took place at about 09.00 PM. The statement was made to the police at about 01.15 AM and the special report reached the Illaqa Magistrate (ACJM, Sonapat) at 08.45 AM. Therefore, there is little possibility of any embellishment in the FIR or in the deposition of these prosecution witnesses.

22. Moreover, after his arrest accused Lachhman made a disclosure statement with regard to the concealment of the weapon used in the crime. The disclosure statement Ex.PL was made by the accused in the presence of Pws Om Parkash and Suresh. PW11-Om Parkash has proved the fact of disclosure statement Ex.PL. In pursuance of that disclosure statement, the accused got recovered the pistol, two live cartridges and one empty cartridge



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which were taken into police possession through memo Ex.PM in the presence of the same witnesses. After effecting recovery of the weapon, the police sent the same alongwith the empty cartridge to the FSL, Madhuban. On examination, it was found that the empty cartridge had been fired from the pistol which was recovered from the possession of accused Lachhman. The report of the FSL Ex.PQ is *per se* admissible. Since the pistol alongwith two live and one empty cartridges were recovered from the accused in pursuance of his disclosure statement Ex.PL, and the same were also got tested from the FSL as such, it is a corroboration piece of evidence for connecting the accused Lachhman with the crime.

23. As regards the evidence against co-accused Chand Singh, the statement of PW13-Mohinder Singh is to the effect that the accused Lachhman had made an extra-judicial confession before him confessing his guilt stating that co-accused Chand Singh had coerced him to commit the offence and had supplied the weapons and ammunition. It is a settled proposition of law that an extra-judicial confession is an inherently weak piece of evidence particularly when it is made to a person who has no connection with the police and is closely related to the family of the complainant/deceased. In the instant case, Sanjay (deceased) was the brother-in-law of this witness. Further, an extra-judicial confession of an accused against a co-accused is also a weak piece of evidence.

24. With respect to the evidentiary value of an extra-judicial confession, the Hon'ble Supreme Court held as under:-



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In ***The State of Punjab Vs. Bhajan Singh & others, 1975 AIR******Supreme Court 258***, it was held as under:-

“15. Coming to the evidence of extra judicial confessions, we find the same to be improbable and lacking in credence. According to Gurmej Singh and Jabarjang Singh PWs, the confessing accused came to them and blurted out confessions. They also requested those two witnesses to produce them before the police. The resume of facts given above would go to show that according to the prosecution case, the murders of the three deceased persons were committed in a most heinous manner and under a veil of secrecy. Persons who commit such murders after taking precautions of secrecy are not normally likely to become garrulous after the commission of the offence and acquire a sudden proneness to blurt out what they were at pains to conceal. In any case it seems rather odd that all the three accused who had not been arrested till the morning of May 9, 1972 should be seized almost at the same time by a mood to make confession. It is significant that Surjit Singh, Charan Kaur and Jito accused had no particular relationship or connection with Gurmej Singh and Jabarjang Singh P Ws. These two witnesses were also not in such a position that the above mentioned three accused would be willing to repose their confidence in them. If Surjit Singh, Charan Kaur and Jito wanted to surrender themselves before the police, we fail to understand as to why they should not themselves surrender before the police and go instead to Gurmej Singh and Jabarjang Singh and blurt out confessions before them. The evidence of extra judicial confession in the very nature of things is a weak piece of evidence. The evidence adduced in this respect in the present case lacks plausibility and, as observed by the High Court, it does not inspire confidence.”

(emphasis supplied)

In ***Kalinga @ Kushal Vs. State of Karnataka By Police******Inspector Hubli, 2024 INSC 124***, it was held as under:-



“14. The conviction of the appellant is largely based on the extra judicial confession allegedly made by him before PW-1. So far as an extra judicial confession is concerned, it is considered as a weak type of evidence and is generally used as a corroborative link to lend credibility to the other evidence on record. In Chandrapal v. State of Chattisgarh⁶, this Court reiterated the evidentiary value of an extra judicial confession in the following words:

“11. At this juncture, it may be noted that as per Section 30 of the Evidence Act, 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. However, this court has consistently held that an extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession. As held in case of State of M.P. Through CBI v. Paltan Mallah, the extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused.”

15. It is no more res integra that an extra judicial confession must be accepted with great care and caution. If it is not supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given. The prosecution must



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establish that a confession was indeed made by the accused, that it was voluntary in nature and that the contents of the confession were true. The standard required for proving an extra judicial confession to the satisfaction of the Court is on the higher side and these essential ingredients must be established beyond any reasonable doubt. The standard becomes even higher when the entire case of the prosecution necessarily rests on the extra judicial confession.”

(emphasis supplied)

25. With respect to the evidentiary value of an extra-judicial confession of one accused inculcating the other, the Hon'ble Supreme Court has held as under:-

In **State of M.P. through CBI Versus Paltan Mallah, Criminal Appeal No.98 of 1999, decided on 20.01.2005**, it was held as under:-

“Another incriminating circumstance sought to be proved against the accused is the extra-judicial confession alleged to have been made by the ninth accused Paltan Mallah wherein he named A-1, A-2, A-5 and A-6. It is alleged that he made the confession to PW-105 Satyaprakash Nishad and A-9 is alleged to have disclosed to PW-105 that these accused persons had given him money and he murdered Shankar Guha Niyogi for the sake of money. Under Section 30 of the Evidence Act, the extra-judicial confession made by a co-accused could be admitted in evidence only as a corroborative piece of evidence. In the absence of any substantive evidence against these accused persons, the extra-judicial confession allegedly made by the ninth accused loses its significance and there cannot be any conviction based on such extra-judicial confession. The High Court, in our view, has given cogent and satisfying reasons for the acquittal of the accused A-1 to A-8. We do not find any reason to interfere with such a finding, especially when this being an appeal against acquittal and this



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Court would be slow in reversing such a finding unless the High Court had made a perverse or erroneous appreciation of the evidence resulting in grave miscarriage of justice. The evidence adduced by the prosecution can only throw some serious suspicion against these accused which cannot be used as a substitute for evidence.”

(emphasis supplied)

In **Pancho Versus State of Haryana, 2011(4) RCR (Criminal)**

665, it was held as under:-

“14. As against A2-Pancho, the prosecution is relying mainly on the extra-judicial confessional statement of A1-Pratham. The question which needs to be considered is what is the evidentiary value of a retracted confession of a co-accused?

15. The law on this point is well settled by catena of judgments of this court. We may, however, refer to only two judgments to which our attention is drawn by Mr. Lalit, learned senior counsel. In Kashmira Singh v. The State of Madhya Pradesh, AIR 1952 Supreme Court 159 referring to the judgment of the Privy Council in Bhuboni Sahu v. The King, 76 Indian Appeals 147 and observations of Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chukerbutty, 38 Cal. 559 this court observed that proper way to approach a case involving confession of a co-accused is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then it is not necessary to call the confession in aid. This court further noted that cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the judge may call in aid the confession and use it to lend assurance to the other evidence and



thus fortify himself in believing what without the aid of the confession, he would not be prepared to accept.

16. In Haricharan Kurmi v. State Bihar, AIR 1964 Supreme Court 1184 the Constitution Bench of this court was again considering the same question. The Constitution Bench referred to Section 3 of the Evidence Act and observed that confession of a co-accused is not evidence within the meaning of Section 3 of the Evidence Act. It is neither oral statement which the court permits or requires to be made before it as per Section 3(1) of the Evidence Act nor does it fall in the category of evidence referred to in Section 3(2) of the Evidence Act which covers all documents produced for the inspection of the court. This court observed that even then Section 30 provides that a confession may be taken into consideration not only against its maker, but also against a co-accused. Thus, though such a confession may not be evidence as strictly defined by Section 3 of the Evidence Act, it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way. This court further observed that Section 30 merely enables the court to take the confession into account. It is, not obligatory on the court to take the confession into account. This court reiterated that a confession cannot be treated as substantive evidence against a co-accused. Where the prosecution relies upon the confession of one accused against another, the proper approach is to consider the other evidence against such an accused and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused, the court turns to the confession with a view to assuring itself that the conclusion which it is inclined to draw from the other evidence is right. This Court clarified that though confession may be regarded as evidence in generic sense because of the provisions of Section 30 of the Evidence Act, the fact remains that it is not evidence as defined in Section 3 of the Evidence Act. Therefore, in dealing with a case against an accused, the court



cannot start with the confession of a co- accused; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

17. Applying the above principles to the case on hand, we find that so far as A2-Pancho is concerned, except the evidence of alleged belated discovery of certain articles at his instance, which we have already found to be doubtful, there is no other evidence on record to connect him to the offence in question. When there is no other evidence of sterling quality on record establishing his involvement, he cannot be convicted on the basis of the alleged extra-judicial confession of the co-accused A1-Pratham, which in our opinion, is also not credible. Once A1-Pratham's extrajudicial confession is obliterated and kept out of consideration, his conviction also cannot be sustained because we have come to the conclusion that the alleged discovery of articles at his instance cannot be relied upon. There is thus, no credible evidence to persuade us to uphold the conviction of A1-Pratham."

(emphasis supplied)

26. As per the prosecution case, the motive for the offence was that co-accused Chand Singh along with his wife Santro and one Sandeep had committed the murder of Anand, another brother of Chand Singh and another son of the complainant. In the said case, deceased Sanjay was a witness. Therefore, Chand Singh in conspiracy with Lachhman got Sanjay murdered. Though, the motive in the instant case is indeed strong, motive in itself is not sufficient to establish the culpability of an accused. Therefore, the mere



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presence of motive is not sufficient to establish the guilt of the accused in the absence of any other substantive evidence.

27. As regards the law laid down by the Hon'ble Supreme Court with respect to the evidentiary value of motive:-

In **N.J. Suraj Versus State represented by Inspector of Police, 2004(11) SCC 346**, it was held as under:-

“4. Now, the only circumstance which remains is that the accused has a motive for the commission of the offence which alone cannot form the basis for conviction as it is well settled that in a case of circumstantial evidence, the circumstances should be such so as to lead to only one irresistible conclusion, which is incompatible with the innocence of the accused. This being the position, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and the High Court was not justified in upholding the convictions of the appellant.”

(emphasis supplied)

In **Sampath Kumar Versus Inspector of Police, Krishnagiri, 2012(2) RCR (Criminal)**, it was held as under:

“14. In the present case the testimony cannot be wholly reliable or wholly unreliable. He is not a chance witness who had no reason to be found near the deceased at the time of the occurrence. There is evidence to show that Palani (PW7) used to sleep with the deceased-Senthil in the verandah of the house. What makes it suspect is that the witness has, despite being a natural witness, made a substantial improvement in the version without their being any acceptable explanation for his silence in regard to the fact and matters which was in his knowledge and which would make all the difference in the case. The Court would, therefore, look for independent corroboration to his version, which corroboration is not forthcoming. All that is brought on record by the prosecution is



the presence of a strong motive but that by itself is not enough to support a conviction especially in a case where the sentence can be capital punishment. In N.J. Suraj v. State represented by Inspector of Police, (2004)11 SCC 346, the prosecution case was based entirely upon circumstantial evidence and a motive. Having discussed the circumstances relied upon by the prosecution, this Court rejected motive which was the only remaining circumstance relied upon by the prosecution stating that the presence of a motive was not enough for supporting a conviction, for it is well-settled that the chain of circumstances should be such as to lead to an irresistible conclusion, that is incompatible with the innocence of the accused. To the same effect is the decision of this Court in Santosh Kumar Singh v. State through CBI., 2010(4) RCR (Criminal) 593 : 2010(5) Recent Apex Judgments (R.A.J.) 518 : (2010)9 SCC 747 and Rukia Begum v. State of Karnataka, 2011(3) RCR (Criminal) 745 : 2011(4) Recent Apex Judgments (R.A.J.) 306 where this Court held that motive alone in the absence of any other circumstantial evidence would not be sufficient to convict the appellant. Reference may also be made to the decision of this Court in Sunil Rai @ Paua and Ors. v. Union Territory, Chandigarh, 2011(3) RCR (Criminal) 636 : 2011(4) Recent Apex Judgments (R.A.J.) 164 . This Court explained the legal position as follows :

"In any event, motive alone can hardly be a ground for conviction. On the materials on record, there may be some suspicion against the accused but as is often said suspicion, howsoever, strong cannot take the place of proof."

15. Suffice it to say although, according to the appellants the question of the appellant-Velu having the motive to harm the deceased-Senthil for falling in love with his sister, Usha did not survive once the family had decided to offer Usha in matrimony to the deceased-Senthil. Yet even assuming that the appellant-Velu had not reconciled to the idea of Usha getting married to the deceased-Senthil, all that can be said was that the appellant-Velu had a motive



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for physically harming the deceased. That may be an important circumstance in a case based on circumstantial evidence but cannot take the place of conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond a reasonable doubt.”

(emphasis supplied)

In **Ramanand @ Nandlal Bharti Versus State of Uttar Pradesh,****2022 AIR Supreme Court 5273**, it was held as under:

“87. It is a settled principle of criminal jurisprudence that in a case based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. This Court in various decisions has laid down the principles holding that motive for commission of offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available. It is equally true that failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. However, it is also well settled and it is trite in law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused.

88. Having regard to the nature of the evidence on record, there is something to indicate that the accused appellant had illicit relationship with Manju and wanted to settle in life marrying Manju. As noted above, in the past accused appellant had got engaged with Manju and was on the verge of getting married. At the relevant point of time when the accused appellant got engaged with Manju, it appears that one and all including the deceased Sangeeta were consenting parties. There is nothing on record to indicate that



at the time of engagement of accused appellant with Manju, the deceased Sangeeta had raised hue and cry or had opposed such decision of her husband. Of course, this is something which is very personal. If at all we believe the illicit relationship of the accused appellant with Manju, then it is possible that the deceased Sangeeta might be an absolutely helpless lady and could not have done anything in that regard. However, the moot question is should this motive by alone be held sufficient to convict the accused appellant for the alleged crime and sentence him to death.

89. In the case of Sampath Kumar v. Inspector of Police Krishnagiri, (2012) 4 SCC 124, decided on 02.03.2012, this Court held as under:

"29. In N.J. Suraj v. State [(2004) 11 SCC 346 : 2004 SCC (Cri) Supp 85] the prosecution case was based entirely upon circumstantial evidence and a motive. Having discussed the circumstances relied upon by the prosecution, this Court rejected the motive which was the only remaining circumstance relied upon by the prosecution stating that the presence of a motive was not enough for supporting a conviction, for it is well settled that the chain of circumstances should be such as to lead to an irresistible conclusion, that is incompatible with the innocence of the accused.

30. To the same effect is the decision of this Court in Santosh Kumar Singh v. State [(2010) 9 SCC 747 : (2010) 3 SCC (Cri) 1469] and Rukia Begum v. State of Karnataka [(2011) 4 SCC 779 : (2011) 2 SCC (Cri) 488 : AIR 2011 SC 1585] where this Court held that motive alone in the absence of any other circumstantial evidence would not be sufficient to convict the appellant. Reference may also be made to the decision of this Court in Sunil Rai v. UT, Chandigarh [(2011) 12 SCC 258 : (2012) 1 SCC (Cri) 543 : AIR 2011 SC 2545]. This Court explained the legal position as follows: (Sunil Rai case [(2011) 12 SCC 258 : (2012) 1 SCC (Cri) 543 : AIR 2011 SC 2545] , SCC p. 266, paras 3132)



"31. ... In any event, motive alone can hardly be a ground for conviction.

32. On the materials on record, there may be some suspicion against the accused, but as is often said, suspicion, howsoever strong, cannot take the place of proof."

31. Suffice it to say although, according to the appellants the question of the appellant Velu having the motive to harm the deceased Senthil for falling in love with his sister, Usha did not survive once the family had decided to offer Usha in matrimony to the deceased Senthil. Yet even assuming that the appellant Velu had not reconciled to the idea of Usha getting married to the deceased Senthil, all that can be said was that the appellant Velu had a motive for physically harming the deceased. That may be an important circumstance in a case based on circumstantial evidence but cannot take the place of conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt."

[Emphasis supplied]

90. Thus, even if it is believed that the accused appellant had a motive to commit the crime, the same may be an important circumstance in a case based on circumstantial evidence but cannot take the place as a conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the accused appellant but suspicion, howsoever strong, cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt.

91. The fact that we have ruled out the circumstances relating to the making of an extra judicial confession and the discovery of the



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weapon of offence as not having been established, the chain of circumstantial evidence snaps so badly that to consider any other circumstance, even like motive, would not be necessary.”

(Emphasis supplied)

28. A perusal of the law as laid down by the Hon’ble Supreme Court is that in a case based on circumstantial evidence, motive is an essential plank of evidence and the absence of motive would certainly create a doubt in the prosecution case. However, it is also a settled proposition of law that motive in itself, without any other substantial evidence, even if strong is not sufficient to establish the guilt of an accused.

29. With respect to the role of acquitted accused namely, Santro, the deposition of Sheela wife of Karan Singh was recorded as PW15 in which she stated that she has seen accused Santro in conversation with Lachhman on 30.01.2001 at the Sonapat Courts. Santro was telling Lachhman to do the job for the sake of his friend Chand Singh and Lachhman stated that he would do the job that day itself. Even, if this evidence is believable, it cannot further the prosecution case qua any of the accused as the purportedly over heard conversation does not even remotely suggest what work was to be done. Even otherwise, it is highly unlikely that these two accused would speak about committing a crime in the presence of this witness. On the other hand, such kind of a deposition is easy to procure especially from a witness who is closely related to the complainant party. Therefore, Santro has rightly been acquitted of the charges framed against her.

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30. A cumulative effect of the aforementioned discussion is that as regards accused Lachhman (appellant No.1), there is the evidence of him being 'last seen' in the company of the deceased, the evidence of an oral dying declaration before PW10-Hukam Chand and PW11-Om Parkash and the recovery of the weapon of offence. Therefore, the offence stands established beyond reasonable doubt. Hence, we find no merit in the present appeal qua Lachhman (appellant No.1) and the same stands dismissed qua him.

31. As regards Chand Singh (appellant No.2), in view of the discussion hereinabove, we find that there is insufficient evidence inculcating him in the crime in question and therefore giving him the benefit of doubt, we deem it appropriate to allow the present appeal qua him (appellant No.2-Chand Singh). Therefore, the impugned judgment dated 19/21.01.2004 passed by the Addl. Sessions Judge, Sonapat is set aside and the accused/appellant No.2 is acquitted of the charges framed against him.

32. In view of the aforementioned discussion, we find no reason to interfere with the findings qua the acquittal of accused Santro and therefore, CRA-D-598-DBA-2004 stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

17.03.2025

JITESH

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