

PETITIONER:
STATE OF PUNJAB

Vs.

RESPONDENT:
GURDEEP SINGH

DATE OF JUDGMENT: 08/09/1999

BENCH:
Umesh C Banerjee, K.T.Thomes, D.P.Mohapatro

JUDGMENT:

BANERJEE, J.

The short question involved in the matter in issue before this Court is the justifiability of the order of acquittal passed by the High Court by reason of lack of probative value of an extra judicial confession, as found by the High Court, in an appeal against conviction and sentence under section 376 read with sections 302 and 201 of the Indian Penal Code. Admittedly, there is no direct evidence available on the record so as to attribute the commission of crime to the respondent herein but it is only on the basis of an extra judicial confession that the learned Sessions Judge thought it fit to pass the sentence for life imprisonment, which stands reversed by the High Court. Confession in common acceptation means and implies acknowledgment of guilt - its evidentiary value and its acceptability however shall have to be assessed by the Court having due regard to the credibility of the witnesses. In the event however, the Court is otherwise in a position having due regard to the attending circumstances believes the witness before whom the confession is made and is otherwise satisfied that the confession is in fact voluntary and without there being any doubt in regard thereto, an order of conviction can be founded on such evidence. The observations of this Court in the case of State of Uttar Pradesh v. M.K. Anthony (1985 CrL. Law Journal 493) seems to be rather apposite in this context. In paragraph 15 of the Report, this Court observed as below: "There is neither any rule of law nor of prudence that evidence furnished by extra-judicial confession cannot be relied upon unless corroborated by some other credible evidence. The Courts have considered the evidence of extra judicial confession a weak piece of evidence. If the evidence about extra judicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting

the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra judicial confession can be accepted and be the basis of a conviction. In such a situation, to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra judicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon."

Incidentally, this Court in the case of Narayan Singh & Ors. v. State of M.P. (AIR 1985 SC 1678) expressly observed that it is not open to any court to start with a presumption that extra judicial confession is a weak type of evidence. In paragraph 7 of the report this Court observed:

"Apart from this there is the evidence of PWs 5 and 9 who state on oath that one of the accused admitted before them that he had murdered the deceased. The learned Sessions Judge has brushed aside their evidence by presuming that their statements constituting an extra judicial confession is a very weak type of evidence. This is a wrong view of the law. It is not open to any court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. In the instant case, after perusing the evidence of PWs 5 and 9 we are unable to find anything which could lead to the conclusion that these independent witnesses were not telling the truth. The evidence of these two witnesses (PWs 5 and 9) which lends support to the evidence of PW 11 was sufficient to warrant the conviction of the accused. The Sessions Judge has committed a grave error of law in analysing and appreciating the evidence of PWs 5 and 9 and brushing them aside on untenable grounds."

In Baldev Raj vs. State of Haryana (AIR 1991 SC 37) this Court further stated the law as below:-

"An extra judicial confession, if voluntary, can be relied upon by the Court along with other evidence in convicting the accused. The value of the evidence as to the confession depends upon the veracity of the witnesses to whom it is made. It is true that the Court requires the witness to give the actual words used by the accused as nearly as possible but it is not an invariable rule that the Court should not accept the evidence, if not the actual words but the substance were given. It is for the Court having regard to the credibility of the witness to accept the evidence or not. When the Court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary, conviction can be founded on such evidence. Keeping these principles in mind, we find that the confession has been properly accepted and acted upon by the Courts below and there is no scope for any doubt regarding the complicity of the appellant in the crime. The confession of the appellant was voluntary. The testimony of PW 4 and PW 5 being responsible persons could not be doubted in the absence of any material to show that they had been motivated to falsely implicate the appellant. The very presence of the appellant and his father with the party of Ishar Dass throughout the operation up to lodging of complaint at the police station dispel any suspicion against the prosecution case and clearly point to the truthfulness

of the same. We are, therefore, unable to find any infirmity in the confession which has been accepted and relied upon by the Courts below."

While it is true that in Narayan Singh's case (supra) this Court expressly observed that it is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence, a later decision of this Court in Kavita vs. State of Tamilnadu (1998 (5) JT SC 151) stated that in the very nature of things it is a weak piece of evidence. In paragraph 4 of the Report this Court in Kavita's case (supra) observed:

"There is no doubt that convictions can be based on extra judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made. It may not be necessary that the actual words used by the accused must be given by the witness but it is for the Court to decide on the acceptability of the evidence having regard to the credibility of the witnesses.

Apparently there may seem to be some expression of divergence but on the totality of the situation, question of there being any difference of expression of opinion does not arise, since Kavita's case (supra) in no uncertain terms laid down that the evidentiary value of the extra judicial confession depends upon the veracity of the witnesses to whom it is made and it is for the Court to decide on the acceptability of the evidence having regard to the credibility of the witnesses. Having dealt with the basics of the legal issue as regards evidentiary value of extra judicial confession and adverting to the factual matrix of the matter at this juncture, the prosecution case as made out is to the following effect: The deceased being a young girl of 10 years along with her brother Sandeep had gone to the house of the accused around 7.30/8.00 p.m. on 18th November, 1989 for the purpose of watching television. The evidence disclosed that Rajinder Singh who happened to be father's sister's husband did also come to pay a visit to the house of the deceased's father and it so happened and as the evidence records that Rajinder Singh also went to the house of the accused for watching television along with the two little children: The factual score depicts that the brother continued to watch the television but the elder sister left the television room to go back to her house. Rajinder Singh again as the evidence disclosed came out as well and found that the accused in a drunken state following the deceased on her way home around 8 0' clock in the evening. The next piece of evidence is rather curious: the deceased girl does not reach home but Rajinder Singh reaches home, had his meal along with the parents of the deceased. The younger brother who also went out for television watching in the house of the accused, returned home and joined the parents and the uncle for the meal - there was, however, no anxiety for the missing daughter of the family and it was only after Rajinder Singh left for his house which is at the next village and around 10 to 15 k.m. away, the deceased's father Jaswant Singh tried to effect a search about the daughter - Jaswant Singh, in a very natural way, went to the house of the accused and found the accused and his brother to be very heavily drunk in the house itself and thus had to come back without much information about the missing daughter. The evidence goes on to record that next

morning the body of the deceased was found in the open verandah of a building belonging to one Smt. Ajmer Kaur. In her evidence Smt. Ajmer Kaur, being PW 4 stated that when she had gone to the verandah for taking 'turi' for the cattle, found the dead body of the child lying under the heap of 'turi' and on such a find immediately informed the girl's father Jaswant Singh. On this score the father of the deceased stated that he on being informed cleared the 'turi' and saw the dead body of his daughter lying there fully naked and her salwar was lying near her. The father stated that she was smeared with blood and was dead and thereafter requested the son of the Sarpanch to keep a watch on the body and went to the police station to lodge the report alongwith the Sarpanch. The police arrived and the usual formalities were completed and FIR was lodged and on completion of the inquest sent the body for post mortem examination. Dr. H.N. Sharma, P.W.5 found the following injuries on the person of the deceased:- "(1) In front aspect of the neck, 1 c.m. above the midline 2 abrasions with dimensions of 2X3 cm were seen. On dissection underline tissues were found to be swollen. Clotted blood was seen in tissues. The thyroid cartilage on right lamina was showing fracture line.

(2) The parietal area showed toores. In the vulval area blood clot was seen, hymen found ruptured, the vagina admitted two fingers, posterior vaginal wall near commissure showed laceration. Vaginal walls were congested. Labia minora were found congested and torn, two swabs were taken each from vagina and cervix. They were smeared on slides and sent to Chemical Examiner Govt. of Punjab Patiala.

The upper part of chest had prominent veins. The laryngeal cavity showed clotted blood. Right side of heart found full of dark coloured blood. Stomach was found empty, bladder contained around 20 ml. of urine."

The post mortem Doctor opined that death was caused due to injury No.1. He also found that the deceased was subjected to rape before the murder and the age of the deceased was between 7 to 11 years- the facts above cannot but be ascribed to be not only serious but ghastly in nature. While it is true that the social aberration which results from the offence is devastating by reason of the nature of the offence committed on a very young girl and the offenders cannot possibly obtain any support or mitigating effect from courts of law, we however, remind ourselves that the law of the land shall have to be administered in accordance with the principles of criminal justice. At this juncture, another aspect of the matter ought to be noted, namely, an extra judicial confession by the accused Gurdeep Singh to one Jaspal Singh (P.W.7). The extra judicial confession runs as below:

"that 20 days ago I had committed a wrong act. Manpreet Kaur her younger brother Sandeep Singh and their relation had come to see television at our house. I came from outside after taking liquor. Then I was served run by my brother who is in the army. When Manpreet went out of the house, I followed her. Then I caught hold of her took her in the veranda where grain husk was lying. I then untied string of salwar, committed rape on her and when she raised alarm, I gagged her mouth with her shawl. When I thought that she will narrate what had happened to her, then

I throttled her and killed and I concealed her body in the heap of grain husk and then I ran away towards a pond and since then I have been roaming about. You are known to Jaswant Singh, father of girl. I had committed this act in the influence of liquor and get me pardon from them as they are your relatives."

It is the evidence of Jaspal Singh (PW 7) that he is driving taxi at Ropar and the accused was also driving the car of a Sant which was also being used as a taxi and used to park his car in the same parking space as used by Jaspal Singh. It is the categorical evidence of Jaspal Singh that on 12th December, 1989 i.e. after about 24 days of the incident the accused came to him and told him that he had committed rape on Manpreet Kaur and murdered her. The said evidence of Jaspal Singh was accepted by the learned Sessions Judge by reason of the fact that it was corroborated by the evidence of Rajinder Singh who had stated that he found the accused following the deceased in a drunken condition. But that finding was negated by the High Court on the ground that extra judicial confession after long lapse of time is of no consequence. The High Court reminded itself that circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. The circumstances must be of such a nature and should form a complete chain as to be capable of supporting the exclusive hypothesis that the accused is guilty of the crime of which he is charged. There is no denial of the fact that extra judicial confession is admissible in evidence and the court in appropriate cases can rely thereon to the extent of even basing conviction of the accused. In a long catena of decisions of this Court, the settled position of the present day is that the extra judicial confession by itself if, otherwise in conformity with the law, can be treated as substantive evidence, and in appropriate cases it can be used to punish an offender. We, however, hasten to add here that this statement of law stands qualified to the extent that the Court should insist on some assuring material or circumstance to treat the same as piece of substantive evidence. Having thus stated the law and general principles as to the extent of reliance to be placed on the circumstantial evidence, let us at this juncture turn on to the factual score in a little bit greater detail for the purposes of the assessment of the entire situation as to whether extra judicial confession noticed above can have any credence or evidentiary value. But before so doing certain basic features in the matter in issue ought to be noted. The features being: (i) the deceased, a young girl of 7 to 10 years along with her brother had gone to the house of the accused in the evening for television viewing; (ii) Rajinder Singh who happened to be the brother-in-law of the deceased's father, also deemed it fit to go and watch the television programme rather than stay with the relatives and have some chit chat with the brother-in-law; (iii) Rajinder Singh also went out of the Television Room shortly after the deceased left the house of the accused and found that the deceased was being followed by a drunken man - it is a definite piece of evidence in the matter that the house of the deceased and that of the accused is not very far from each other (may be two or three houses in between); (iv) Rajinder Singh being an elderly man - at least not a teenager - allowed a girl of 7 to 10 years, being a close relative, to be followed by a drunken man and quietly went

back to the deceased's house without any utterance as regards the event witnessed by him - had his meal with the brother-in-law and went back to the village: The facts above, have been very strongly criticised by the High Court and we find sufficient justification in that regard since normal reaction of a relative, would be to take the girl home or bring the father on to the sight immediately or even after going back to the deceased's house narrate the event of the girl being followed by a drunken man as also to go out with the father in search of the girl afterwards alongwith the deceased's father: It is difficult to treat it as a conduct in consonance with the normal human behaviour of a relative having seen the young girl of 10 years being followed by a drunken person. Human relationship cannot possibly have the same kind of reaction as has been depicted by Shri Rajinder Singh and it is on this score that the learned Advocate for the respondent herein also strongly commented upon the introduction of this particular witness in order to have a semblance of corroboration at best so far as the extra-judicial confession is concerned. The recovery of the body of the deceased by itself does not find any link or in any way connect the accused with the commission of the offence. Records depict that Sandeep being the younger brother was not examined and the learned Advocate in support of the appeal, also has no answer. Turning attention on to the issue of probative value and total evidenciary impact in the matter, one cannot but return a verdict of non-credit worthiness of such a piece of circumstantial evidence: 24 long days have elapsed - and it is only then the investigating officer was able to locate a fellow Taxi driver, who appears to be the brother-in-law of the brother-in-law of father of the deceased. The evidence of Rajinder Singh thus becomes important - but is it worthy of such an importance - The Sessions Court has exaggerated its effect, whereas the High Court has completely over-turned it and described the same as a wholly unreliable and untrust-worthy evidence. We have herein before dealt with this particular piece of evidence - Can the reaction of a close relative be in the manner as Rajinder Singh had - The answer cannot but be in the negative - where is the anxiety to look for the girl - where is the desire to see that nothing untoward should happen - a minor girl of 10 years being followed by a drunken man and thereafter the girl does not come back home till such time he finishes the meal: Even thereafter not a word to the father but he quietly went back to his own village: It is not a trust-worthy evidence to rely on for corroboration to the extra-judicial confession to complete the chain of circumstances. If the above pieces of evidence are kept aside - there is no other available evidence which can even remotely connect or point towards the guilt of the accused. There is no dispute that the deceased was raped and murdered but that would not be enough for the prosecution to rope in the accused without some such evidence depicting unmistakably to the guilt of the accused. The next important aspect is the credibility of the person who spoke about the confession. He is a taxi driver and no part of evidence records that he has had a clout with the Police - It is not in evidence as to the period of friendship between accused and the witness - Indeed a very close friend may be taken into confidence and a confession effected - Commission of an offence of rape on a minor child and thereafter eliminating the victim girl from this world could not have been talked of or discussed with any or everybody so casually. There must be some cogent reasons

for making a confession of this nature. The only reason available in evidence for affording an occasion to make the confession is that the accused used to drive the car of a Sant and as such, he used to park his car in the same parking area where the witness was also parking the car. In our view this piece of evidence does not inspire confidence as to the credibility of the witness. The choice of a person to confess cannot be effected just like that. In this context strong reliance was also placed by the High Court on the decision of this Court in the case of Makhan Singh v. State of Punjab (AIR 1988 SC 1705). This Court while dealing with more or less similar situation in paragraph 11 observed:-

"On 10th August, 1985 FIR was lodged by Nihal Singh (PW2) and on 13.8.1985 the appellant went to Amrik Singh (PW 3) to make an extra judicial confession. Amrik Singh (PW 3) to make an extra-judicial confession. Amrik Singh says that the appellant told him that as the police was after him he had come and confessed the fact so that he might not be unnecessarily harassed. There is nothing to indicate that this Amrik Singh was a person having some influence with the police or a person of some status to protect the appellant from harassment. In his cross-examination he admits that he is neither the Lambardar or Sarpanch nor a person who is frequently visiting the police station. He further admits that when he produced the appellant there was a crowd of 10 to 12 persons. There is no other corroborative evidence about the extra-judicial confession. As rightly conceded by the learned counsel for the State that extra-judicial confession is a very weak piece of evidence and is hardly of any consequence. The council, however, mainly relied on motive, the evidence of last seen, the evidence of recovery of dead bodies and the conduct of the appellant in not making a report about the missing father and son."

The confession in the normal course of events are made to avoid harassment by the police and to a person who could otherwise protect the accused against such a harassment. The records in the present appeal do not reflect any one of these aspects. As such it is difficult to point to the accused with the crime on the basis of the evidence available in this case. The incident did take place on 18th November, 1989 and the body was recovered on 19th November. The extra-judicial confession of the accused as regards his involvement in the crime is said to have been effected to Jaspal Singh PW 7 on December 7, 1989 - thus a delay of more than 20 days without any explanation whatsoever. The delay in recording extra-judicial confession before a person wholly unconnected with the police is always a matter of great suspect. In our view the High Court was right in rejecting the confessional statement. In view of want of sufficient circumstances, we record our concurrence with the findings of the High Court that the charge against the respondent has not been proved beyond all reasonable doubt and his conviction therefore cannot be sustained. The appeal is hence dismissed.