

*Before S.S. Saron & S.P. Bangarh, JJ.*

**GURPREET KAUR W/O BUDH SINGH  
AND OTHERS—Petitioners**

*versus*

**STATE OF PUNJAB—Respondent**

**CRA No. D-1030-DB of 2007**

January 28, 2013

- A. *Indian Penal Code 1860 - Ss. 302/120-B - Murder trial - Extra-judicial confession by Accused - Not open to Court to start with the presumption that extra-judicial confession is a weak type of evidence - Extra judicial confession if voluntary and true and made in a fit state of mind, without any inducement, threat or promise, can be relied upon by the Court - Such confession will have to be proved like any other fact - Conviction on basis of extra-judicial confession of Accused upheld.***

*Held*, that extra judicial confession may or may not be a weak evidence, as each case is required to be examined on its own facts. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. While on the contrary, an extra judicial confession, if voluntary and true and made in a fit state of mind. can be relied upon by the Court and such confession will have to be proved like any other fact. As held by the Hon'ble Supreme Court of India in "Sivqkumar v. State by Inspector of Police, 2006 (1) RCR (Cri.) 208".

(Para 41)

*Further held*, that in Sidharth etc. v. State of Bihar, 2005 (4) RCR (Cri.) 651 (SC); it was held by the Hon'ble Supreme Court of India that PW-B Aroko Pratim Banerjee in this case made extra judicial confession. It was held that confession made by appellant Armit Das was not under any inducement. threat or promise and is voluntary in nature. Therefore. it is perfectly admissible under the Evidence Act.

(Para 42)

**B. *Extra-Judicial confession by the Accused - Binding on Co-Accused under Section 30 of Indian Evidence Act, 1870.***

*Further held*, that for executing this plan of killing the deceased. a sum of Rs.1.00 lac was settled but that amount was not given in advance. May be it was to be given later on after the execution of pian of killing Budh Singh (deceased). Extra judicial concession made by appellant No.1 (Gurpreet Kaur) is binding on appellants Nos. 2 and 3 under Section 30 of the Indian EvidenceAct.

(Para 52)

Amit Mehta, Advocate, *for the appellants.*

P.S. Thethi, Addl.A.G. Punjab, *for the respondent.*

**S.P. BANGARH, J.**

(1) The appellants have assailed the judgment of conviction and order of sentence dated 29th August, 2007, passed by the learned Sessions Judge. Hoshiarpur, in Sessions Case No. 23 dated 21.4.2006 and Session Trial No. 32 dated 5th June, 2006, emanating from FIR No. 11 dated 16.01.2006 under Sections 302/120-B of the Indian Penal code (for short IPC). Police Station Dasuya whereby they were convicted for commission of offences punishable under Sections 302/120-B IPC and sentenced to undergo imprisonment for life each for commission of offence punishable under Section 302 IPC. They were also sentenced to undergo imprisonment for two years each and to pay fine of Rs.1,000 each and in default of payment of fine to further undergo ngorous imprisonment for one month each for commission of offence punishable under Section 120-B IPC. Both the sentences were ordered to run concurrently.

(2) The Case of the prosecution is that on 16.01.2006. Hari Singh Sarpanch of village Argowal got recorded his statement Ex. PA with Lakhbir Singh, SI/SHO of Police Station Garhdiwala stating thing, that he was present in his house and at about 9.00 a.m. Gurpreet Kaur (appellant No.1) alongwith her son Sukhwinder Singh told him that her husband who

used to reside in the rooms near Gurdwara Sahib has been murdered by some unknown persons by causing injuries. Thereupon, he alongwith, Sucha Singh member Panchayat, Satnam Singh Panch and Bakhshish Singh Lambardar, reached at the place of incident and saw that Budh Singh (deceased) has been murdered by some unknown persons after giving him injuries. Hari Singh-complainant then alongwith Sucha Singh after leaving Gurpreet Kaur (appellant No. 1) and her son Sukhwinder Singh near the corpse of Budh Singh (deceased) went to inform the police of Police Station Garhdiwala and the police met them on the way.

(3) Hari Singh-complainant made his statement Ex. PA before Lakhbir Singh SI/SHO who made his endorsement Ex. PA/1, thereon, and sent the same to the Police Station Dasuya where on its basis formal FIR Ex. PA/2 was recorded by Tirath Ram ASI. Thereafter, Lakhbir Singh SI/SHO took up the investigation of this case. He visited the spot and prepared the rough site plan Ex. PW with correct marginal notes. He also recovered some articles from the place of occurrence. He also picked up blood stained earth from the place of occurrence and sealed that into a parcel, that was seized *vide* memo Ex. PB. Lakhbir Singh SI/SHO also seized half burnt buries and packet bearing No. 999 and one blood stained parna Ex. P1 (picce of cloth) from the spot and after making parna (Ex. P1) into parcel, seized that *vide* memo Ex. PC/1. He also recovered blood stained knife Ex. P2 from the place of occurrence and seized *vide* memo Ex. PD after preparing its sketch Ex. PE.

(4) On 29.1.2006 photographs Ex. P7 to Ex. P10 alongwith their negatives Ex. P11 to Ex. P14 were produced by Raj Kumar HC before Lakhbir Singh SI/SHO which were seized *vide* memo Ex. PG. Lakhbir Singh SI/SHO also prepared inquest report Ex. PH and sent the corpse of Budh Singh (deceased) to the mortuary for autopsy. After autopsy, clothes of the corpse i.e. trouser Ex. P19, shift Ex. P20 vest Ex. P21 sweater Ex. P22 underwear Ex. P23 and rosary Ex. P24 were handed over to Lakhbir Singh SI/SHO who seized those *vide* memo Ex. PX/1. Lakhbir Singh SI/SHO also called the finger prints expert at the spot who took the

finger prints from bottle Ex. P15 having some liquor and cup Ex. P16, with the help of powder etc. Later Ex. P15 and Ex. P16 were handed over to Lakhbir Singh SI/SHO who seized those *vide* memo Ex. PK Later, Gurdip Singh SI gave his report Ex. PJ at the spot.

(5) On 17.1.2006 Lakhbir Singh SI/SHO arrested Gurpreet Kaur (appellant No. 1) and prepared her arrest memo Ex. PX that was signed by her. He also arrested Ashil Kumar (appellant No. 2) on 18.01.2006 *vide* arrest memo Ex. PY. He also arrested Ganga Ram (appellant No. 3) on 18-01-2006 *vide* arrest memo Ex. PY/1. he also sent the information about the arrest of Ganga Ram (appellant No. 3) *vide* memo Ex. PY/2. he also sent information about the arrest of Ashok Kumar (appellant No. 2) *vide* memo Ex. PY/3.

(6) On, 19.01.2006 investigation of this case was entrusted to Kapoor Singh ASI (PW-12), who on that day interrogated all the three appellants. Kapoor Singh ASI obtained finger prints of the appellants in the presence of Judicial Magistrate. Hardeep Singh PW was associated in the investigation in whose presence as also in the presence of Harjinder Singh. Kapoor Singh ASI interrogated Ganga Ram (appellant No. 3) and Ashok Kumar (appellant No. 2) separately. Ganga Ram (appellant No. 3) suffered disclosure statement Ex. PR and pursuant, thereto, he got recovered jacket Ex. P15 of mungia colour from his rented room located in the area of Mohalla Gurnam Nagar, Ludhiana. Jacket was made into a parcel that was sealed by Kapoor Singh ASI (PW-12) with his seal bearing impression 'KS' who later this parcel was seized *vide* memo Ex. PT. Rough site plan of the place of recovery of jacket Ex. PT/1 was also prepared with correct marginal notes. Ashok Kumar (appellant No. 2) also suffered disclosure statement Ex. PS during investigation and pursuant thereto, he got recovered tessi Ex. P16 one shirt Ex. P17 one trouser Ex. P18 stained with blood from the place disclosed in the disclosure statement (*supra*). These, tessi and clothes were made into separate parcels, that were sealed by Kapoor Singh ASI with his seal bearing impression 'KS'. Later these parcels were seized *vide* memo Ex. PU. Before preparing parcels, sketch of tessi Ex. PV was also prepared. On return to the police station he deposited the case property with the MHC.

(7) After completion of investigation Station House Officer of Police Station Dasuya instituted police report under Section 173 Code of Criminal Procedure (Cr.P.C. for short) against the appellants before the learned illaqa Magistrate to the effect that it appeared that they have committed offences punishable under Sections 302/120-B IPC.

(8) On presentation of police report copies of documents as required under Section 207 Cr. P.C. were furnished to the appellants by the learned illaqa Magistrate who later committed the case the Court of Session which was entrusted to the learned that court where charge under Sections 302/120-B IPC was framed against the appellants, where to, they pleaded not guilty and claimed trial, Consequently prosecution evidence was summoned.

(9) At the trial the prosecution examined Hari Singh-complainant as PW-1, Mahesh Kumar Constable as PW-2. Raj Kumar HC as PW-3, Sukhwinder Singh as PW-4 Dr. Shiv Raj Rekhi as PW-5, Gurdip Singh SI as PW-6. Surinder Kumar Draftsman at PW 7, Dilbagh Singh as PW-8, Gulshan Lal HC as PW-9, Mohinder Singh as PW-10. Baljit Singh Constable as PW-11, Kapoor Singh ASI as PW-12 and Lakhbir Singh SI/SHO as PW-13 and closed the evidence later.

(10) After the closure of prosecution evidence appellants were examined under Section 313 Cr. P.C. wherein they denied the allegations of the prosecution pleaded innocence and false implication in this case.

(11) Gurpreet Kaur (appellant No. 1) gave her own version that they have two houses one house is situated adjacent to the gurdwara and a passage goes to this house through the gurdwara. Many people used to come and stay in the gurdwara day and night. Her husband Budh Singh (deceased) some times used to sleep in this house and some times in the other house. In the morning of 16.01.2006 some unknown persons killed her husband and also took away his gold bracelet and gold ring. She further stated that she informed the Sarpanch, police and other relatives. She also

stated that she had no connection with the other appellants. Police arrested her on 16.01.2006 and thereafter she was falsely implicated in the present case on suspicion.

(12) She further stated that it was a blind case. She had no dispute with her husband regarding maintenance. She further stated that Sukhwinder Singh (PW-4) her son used to reside with Dilbagh Singh (PW-8) with whom she did not have good relations. She further stated that Dilbagh Singh (PW-8) is her relative but is not on good terms. She also stated that there is a party faction in the village and she had been made a scape goat.

(13) Ashok Kumar (appellant No. 2) also gave his own version that he is a family man and does labour work his wife and children are residing in a rented house in Ludhiana and police arrested him on the night of 16.01.2006 from Ludhiana and after taking him to the police station got his thumb and finger impressions on the bottle cup and other articles. He also stated that he never resided as a tenant in the house of the deceased (Budh Singh).

(14) Ganga Ram (appellant No. 3) gave his own version that he is a family man and resides at Ludhiana in a rented house. He also stated that on 16.01.2006 he had come to meet Ashok (appellant No. 2) and police arrested him and got his thumb and finger impressions on bottle and cup etc. He also stated that Ashok (appellant No. 2) belongs to his village.

(15) Appellants were called upon to enter in defence, but they closed the defence evidence without examining any witness.

(16) After hearing both the sides the learned trial Court *vide* impugned judgment of conviction and order of sentence convicted and sentenced the appellants as described in the first paragraph of this judgment. Aggrieved, thereagainst, the appellants, who were caused before the learned trial Court have come up in this appeal with prayer for acceptance thereof and for their acquittal of the charge framed against them for the commission of offences punishable under Section 302, 120-B IPC.

(17) We have heard learned counsel for the appellants and learned Additional Advocate General for the respondent and perused the record of the learned trial Court with their assistance.

(18) PW-1 Hari Singh-complainant who was the Sarpanch of the village testified that on 16.01.2006 around 9.00 a.m., when he was present in his house, Gurpreet Kaur (appellant No. 1) alongwith her son Sukhwinder Singh (PW-4) came to him and told that her husband Budh Singh (deceased) has been murdered by some unknown persons by causing injuries in the haveli belonging to her and, thereupon, he (PW-1) alongwith Sucha Singh, Panch went to the haveli and found Budh Singh (deceased) lying dead there. He, further, testified that Gurpreet Kaur (appellant No. 1) and has son Sukhwinder Singh (PW-4) were asked by him to stay with the corpse of Budh Singh (deceased) and he went to the police and made his statement Ex. PA, which was signed by him, after admitting its correctness. He, further testified that from the place near the corpse, three half burnt blood stained beeries and one packet make Anand Biri 999, were also taken into possession by Lakhbir Singh SI/SHO by making those into a parcel that was sealed by latter with his seal bearing impression 'LS' and that parcel was seized *vide* memo Ex. PA.

(19) PW-1 Hari Singh-complainant, further testified that the blood stained earth was also lifted from the spot by the police and that was made into parcel which was sealed with the seal bearing impression 'LS' and that parcel was seized *vide* memo Ex. PB. He also testified that one blood stained parna (piece of cloth) was also lifted from the spot and was made into parcel that was sealed by Lakhbir Singh SI/SHO with his seal bearing impression 'LS' and that pace was seized *vide* memo Ex. PC. He also testified that one pair of leather shoes of the deceased (Budh Singh) were also sealed into a parcel and that parcel was sealed with the seal bearing impression 'LS' and was seized *vide* memo Ex. PC/1. He also testified that knife was also recovered from the spot that was sealed into a parcel by Lakhbir Singh SI/SHO with his seal bearing impression 'LS' after making its rough sketch Ex. PE and that parcel was seized *vide* memo Ex. PD.

It may be mentioned here that parna (Ex. P1), knife (Ex. P2), pair of shoes Ex. P3 and Ex. P4, blood stained earth (Ex. P5), one bottle of plastic having finger prints (Ex. P6) were produced during the deposition of this witness at the time of trial.

(20) PW-1 Hari Singh-complainant further testified that on 17.01.2006. Gurpreet Kaur (appellant No. 1) came to him against around 8.00 a.m. and told him that she should be saved and that on 15.01.2006 she had brought men from Ludhiana (appellant Nos. 2 and 3) on 15.01.2006 around 6.00 p.m. to the village; they took meal at 9.00 p.m. and around 12 at night, she got murdered her husband Budh Singh (deceased) from bhaiyas (appellant Nos. 2 and 3). He further testified that he took Gurpreet Kaur (appellant No. 1) to police station Garhdiwala.

(21) PW-2 Mahesh Kumar Constable tendered in evidence his affidavit Ex. PF.

(22) PW-3 Raj Kumar HC testified that on 16.01.2006 he went to village Argowal and took photographs Ex. P7 to Ex. P10 whose negatives are Ex. P11 to Ex. P14 at the instance of SHO and later these photographs and negatives were produced by him before the police which were seized *vide* memo Ex. PG, that was attested by him.

(23) PW-4 Sukhwinder Singh also testified that Budh Singh (deceased) was his father and earlier he was serving at Ludhiana and had constructed a house there. He also testified that appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) were tenants in that house at Ludhiana and his mother Gurpreet Kaur (appellant No. 1) used to go to Ludhiana to collect rent from the appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram). He further testified that on 15.01.2006 his mother Gurpreet Kaur (appellant No. 1) had gone to Ludhiana to collect rent and she returned from Ludhiana around 6.30 p.m. alongwith two bhaiyas (appellants Nos. 2 and 3) present in the Court. He further testified that his mother Gurpreet Kaur (appellant No. 1) served food and liquor to them and he, alongwith his brother was present in the courtyard of the house and appellants in the room in the house. He



further testified that his mother Gurpreet Kaur (appellant No. 1) and appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) were talking with each other, but he did not hear, what they were talking. He further testified that his father came and took meal and then he went to second house (haveli) and his mother took appellants Nos. 2 and 3 as also their bedding to the haveli, where his father was to sleep and his mother came back and they went to sleep.

(24) PW-4 Sukhwinder Singh further testified that when his father did not return as usual in the morning he inquired from his mother as to why his father had not come. He further testified that he and his mother went to the haveli, where both the appellants were not present and the haveli was lying locked and they went inside the haveli and found his father lying dead having big injury on his neck and blood was oozing and then, he and his mother went to inform the Sarpanch, who visited the spot.

(25) He further testified that one jacket of his father on which Budh Singh was written as BS was found missing from the haveli and Sarpanch informed the police. He further testified that he suspected both the appellants i.e. appellants Nos. 2 and 3 to be the persons who murdered his father as they were with his father. He also testified that his mother threatened him and other family members in case they dared to inform the police.

(26) PW-5 Dr. Shiv Raj Rekhi testified that on 17.01.2006 he conducted the postmortem examination on the corpse of Budh Singh (deceased) and found following injuries on his persons :

(1) Incised, wound 10 cm x 6 cm x vertebra deep, Elliptical in shape, on the front of neck, lower margin, 3 cm above the suprasternal notch upper margin at the level of upper and of thyroid cartilage. Hyoid bone was also cut. Whole of larynx was cut through and through. Major vessels of both sides of neck (carotid Artery and Jugular vein) was cut. Posterior part of tongue cut through. Hypopharyngeal, Wall is sliced, various muscles of neck were also cut. Wound margin was covered with semi clotted blood.

- (2) Lacerated wound 3 cm x 1 cm on the medial margin of left eye brow vertical underlying bone fractured.
- (3) Contused abrasion on the bridge of nose 3 cm x 2 cm underlying nasal bones fractured and crushed.
- (4) Incised wound 4 cm x 2 cm on the web space between thumb and index finger of left hand.
- (5) Contused abrasion 3 cm x 2 cm on the forehead in the middle 5 cm above eye brow.

(27) He further testified that all other organs were healthy except as described in postmortem report. He further testified that the cause of death in this case was shock and haemorrhage, which was sufficient to cause death in ordinary course of nature. He also testified that all the injuries were antemortem in nature and probable time between injury and death was immediate and between death and postmortem examination between 24 to 36 hours. He further testified that he handed over dead body, copy of postmortem report, police inquest papers in original from pages no. 1 to 20 duly marked and signed by him to the police.

(28) He further testified that Ex. PG is the correct copy of the original postmortem report, which was brought by him at the time of his deposition. He also testified that Ex. PG/1 was the pictorial diagram showing the seat of injuries. He also testified that he conducted the postmortem examination on the corpse of Budh Singh (deceased) on the police request Ex. PG/2. He also proved the inquest report Ex. PH.

(29) PW-6 Gurdip Singh SI testified that on 16.01.2006 he was posted as Finger Prints Expert in the office of SSP, Hoshiarpur, on which day, he received a telephonic message and reached at Police Station Garhidiwala on 16.01.2006 and, thereafter, he proceeded to the scene of crime i.e. haveli of Budh Singh (deceased) in village Argowal. He further testified that he inspected the place of occurrence alongwith investing officer of this case. He further testified that Lakhbir Singh SI/SHO, P.S. Garhidiwala

showed him articles suspected to be handled by the culprits. He examined those with the help of suitable powder and found some finger prints on a bottle of rum and a cup of white and golden colour. He developed the finger print impressions and encircled those with his initials as GS. He further testified that he advised the investigating officer to make the parcel of above-said articles and sent the same to Director, FPB, Phillaur for further necessary action. He proved his report Ex. PJ.

(30) PW-7 Surinder Kumar Draftsman prepared the site plan Ex. PL with correct marginal notes.

(31) PW-8 Dilbagh Singh also testified that on 16.01.2006, Lakhbir Singh SI/SHO prepared inquest report Ex. PH in his presence on the corpse of Budh Singh (deceased), which was identified by him and Bakhshish Singh and signed the same. He further testified that he alongwith Bakhshish Singh identified the corpse of Budh Singh (deceased) before the doctor, who conducted the postmortem examination, thereon. He further testified that his statement was recorded by the police.

(32) PW-9 Gulshan Lal HC tendered in evidence, his affidavits Exs. PM and PN.

(33) PW-10 Mohinder Singh Constable tendered in evidence, his affidavit Ex. PO.

(34) PW-11 Baljit Singh Constable also tendered in evidence, his affidavit Ex. PQ.

(35) PW-12 Kapoor Singh ASI deposed on the lines of investigation which has been reproduced in the earlier parts of this judgement.

(36) PW-13 Lakhbir Singh SI/SHO also deposed on the lines of investigation conducted by him in this case.

(37) Learned counsel for the appellants contended that some unknown persons committed the murder of Budh Singh (deceased) husband of Gurpreet Kaur (appellant No. 1) and she has been falsely implicated in

the present case. He also contended that there was no occasion for the appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) to kill the husband of appellant No.1 (Gurpreet Kaur), as they had no motive, therefore. Even, it was contended that payment of Rs. 1.00 lac by Gurpreet Kaur (appellant No. 1) to Ashok Kumar and Ganga Ram (appellant Nos. 2 and 3) has not been proved and even the appellant No. 1 (Gurpreet Kaur) has no means to pay this huge amount to appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) for killing her own husband. Even, it was contended that appellant No.1 (Gurpreet Kaur) had strained relations with Dilbag Singh (PW-8) and due to that reason, he (PW-8) testified against her. He also contended that, according to the testimony of Sukhwinder Singh (PW-4), appellant No.1 (Gurpreet Kaur) was taken in custody on 16.01.2006 itself and, therefore, it was impossible for her to suffer extra judicial confession on 18.01.2006.

(38) Learned counsel for the appellants also contended that the police forced the appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) to touch bottle and cup with their fingers and, therefore, these finger prints were fabricated by the police to fasten the appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) with the liability of commission of murder of Budh Singh (deceased). So, learned counsel for the appellants contended that some unknown persons intruded into the house of Budh Singh (deceased) and committed his murder and the appellants have been falsely implicated in this case due to party faction in the village.

(39) On the other hand the learned Additional Advocate General, Punjab for the respondent—State contended that no motive can be ascribed to the police to implicate the appellants falsely in this case. He also contended that it is proved on the record that Gurpreet Kaur (appellant No. 1) brought her co-appellants Nos. 2 and 3 from Ludhiana and later, served them liquor and food to make them ready for killing her husband and later, appellants Nos. 2 and 3 were taken to the haveli, where Budh Singh (deceased) husband of Gurpreet Kaur (appellant No. 1) was to sleep. So, he contended that the presence of appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) was established at the place of occurrence from the testimony of

Sukhwinder Singh (PW-4) who is the son of the appellant No. 1 (Gurpreet Kaur with whom, she had cordial relations. So, he contended that the learned trial Court rightly convicted and sentenced all the three appellants *vide* impugned judgment and order sentence, therefore, these may be upheld and affirmed.

(40) We have given our thoughtful consideration to the contentions raised by the learned counsel for the appellants and learned Additional Advocate General, Punjab for the respondent-State, but we do not find any merit in the contentions raised by the learned counsel for the parties as no motive can be ascribed to the prosecution witness to testify falsely in this case. According to the record appellant No. 1 (Gurpreet Kaur) was arrested on 17.01.2006 while other appellants were arrested on 18.01.2006 it appears that due to inadvertence, Sukhwinder Singh (PW-4) testified that her mother (appellant No. 1) was taken in custody on 16.01.2006 itself. So, the fact remains that she was taken in custody on 17.01.2006 and she suffered extra judicial confession before Hari Singh (PW-1) on 16.01.2006 itself. Hari Singh (PW-1) was the Sarpanch of the village at the time of incident, and a co-villager of appellant No. 1 (Gurpreet Kaur) and, therefore, he was the right person with whom she could suffer her confession about her complicity in the commission of murder of her husband. Her conscience gnawed her and she might be under tremendous pressure after getting her husband killed from other appellants. In order to extenuate her burden, she pondered it apt to confess her crime before PW-1 (Hari Singh).

(41) Extra judicial confession may or may not be a weak evidence, as each case is required to be examined on its own facts. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. While on the contrary an extra judicial confession, if voluntary and true and made in a fit state of mind can be relied upon by the court and such confession will have to be proved like any other fact as held by the Hon'ble Supreme Court of India in *Sivakumar versus State by Inspector of Police, (1)*.

(42) In *Sidharth etc. versus State of Bihar*, (2) it was held by the Hon'ble Supreme Court of India that PW-8 Aroko Pratim Banerjee in this case made extra judicial confession. It was held that confession made by appellant Armit Das was not under any inducement, threat or promise and is voluntary in nature. Therefore, it is perfectly admissible under the Evidence Act.

(43) Learned counsel for the appellants failed to point to any circumstance, whereunder, it could be held that extra judicial confession made by the appellant No. 1 (Gurpreet Kaur) was under any inducement threat or promise and was not voluntary in nature. When, that was so, it was perfectly admissible under the Evidence Act, in view of the aforementioned judgments passed by the Hon'ble Apex Court.

(44) In "*Aftab Ahmad Anasari versus State of Uttaranchal* (3); Hon'ble Supreme Court of India upheld the extra judicial confession made by the accused before a person for the reason that he was ex-pradhan of the village and the appellant was under an impression that the witness would be able to help him by approaching the police. This extra judicial confession was held to be rightly relied upon to convict the accused. It was held that there is neither any rule of law nor of prudence that the evidence furnishing extra judicial confession can not be relied upon unless corroborated by some other credible evidence. It was held that the evidence relating to extra judicial confession can be acted upon, if it comes from the mouth of a witness who appears to be unbiased and in respect of whom even remotely nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused. This ruling fully applies in the case in hand for upholding the impugned judgment of conviction and order of sentence.

(45) In *Chattar Singh and Anr. versus State of Haryana* (4); Hon'ble Supreme Court of India held that it is not open to any court to start with a presumption that extra judicial confession is a weak type of

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(2) 2005 (4) RCR (Cr.) 651 (SC)

(3) JT 2010 (1) SC 424

(4) 2008 (4) RCR (Cr.) 133

evidence. Such a confession can be relied upon and conviction can be founded, thereon, if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused. A confession made by an accused is irrelevant, if the making of the confession appears to the court to have been caused by any inducement threat or promise. A confession would be voluntary, if it is made by the accused in a fit state of mind and if it is not caused by any inducement threat or promise which has reference to charge against him proceeding from a person in authority.

(46) So, in view of the judgment (*supra*) it must be held that extra judicial confession made by appellant No. 1 (Gurpreet Kaur) in this case before Hari Singh (PW-1) is admissible in evidence. It is to be seen, as to whether the extra judicial confession made by appellant No. 1 (Gurpreet Kaur) before PW-1 (Hari Singh) is voluntary PW-1 (Hari Singh) in candid words testified that on 17.01.2006 appellant No. 1 (Gurpreet Kaur) came to him around 8 a.m. and suffered extra judicial confession before him that she had brought her co-appellants from Ludhiana for murdering her husband namely Budh Singh (deceased) and her co-appellants took meal around 9.00 p.m. and around 12 night, the co-appellants executed this work.

(47) PW-1 (Hari Singh) was subjected to searching cross-examination by the learned counsel for the appellants before the learned trial Court, but the long cross-examination failed to elicit anything worth the name which could possibly cause any dent in the testimony of PW-1 (Hari Singh) regarding suffering of extra judicial confession before him by appellant No. 1 (Gurpreet Kaur). There is nothing in the cross-examination to reveal that he had animus or hostility towards the appellant No. 1 (Gurpreet Kaur) or her co-appellants. He is the co-villager of appellant No. 1 (Gurpreet Kaur) and Sarpanch of Gram Panchayat of her village. Therefore, he was a proper person for suffering of extra judicial confession by appellant No. 1 (Gurpreet Kaur). He was also capable of helping her. The choice of the appellant No. 1 (Gurpreet Kaur) for suffering extra judicial confession about getting her husband killed from her co-appellants thus rightly fell upon PW-1 (Hari Singh).

(48) It is the case of the prosecution that appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) are the tenants in the property of appellant No. 1 (Gurpreet Kaur) and her husband namely Budh Singh (deceased). No evidence has come in defence to show that appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) are not the tenants of the deceased (Budh Singh) and his wife Gurpreet Kaur (appellant No. 1). In this manner, appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) were not strangers to appellant no. 1 (Gurpreet Kaur). She conspired with them to murder her husband. She brought them from Ludhiana for getting her husband murdered.

(49) PW-4 (Sukhwinder Singh) who is the son of appellant No. 1 (Gurpreet Kaur) and Budh Singh (deceased) in candid words testified that appellants Nos. 2 and 3 to whom he called bhaiyas (migrant labourers) were brought by her mother from Ludhiana on 15.01.2006, where she had gone to collect rent. He testified that appellant No.1 (Gurpreet Kaur) returned from Ludhiana at about 6.30 p.m. and brought her co-appellants with her to whom she served food and liquor and later they were sent to the place of occurrence, where, Budh Singh (deceased) was to sleep.

(50) From this evidence, it is made out that Budh Singh (deceased) and appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) were lastly seen together by Sukhwinder Singh (PW-4) whose testimony during cross-examination could not be shattered. No motive can be ascribed to him testify falsely against the appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram), as also, against the appellant No.1 (Gurpreet Kaur) who is his mother. What was the need for appellant No.1 (Gurpreet Kaur) to bring other appellants to her house. She during her examination did not state that appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) are not her tenants in the property located in Ludhiana. Even, appellants Nos. 2 and 3 have not stated in their examination under Section 313 Cr. P.C. that they are not the tenants in the property belonging to the deceased (Budh Singh) and appellant No. 1 (Gurpreet Kaur).

(51) So, it stands established that appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) were tenants in the property of the deceased (Budh



Singh) and appellant No. 1 (Gurpreet Kaur), and, therefore, the choice of appellant No. 1 (Gurpreet Kaur) fell on them for getting her husband (Budh Singh—deceased) murdered. After all, what was the need for appellant No. 1 (Gurpreet Kaur) to bring her co-appellants to her house. They were not her farm labourers. Serving of liquor by a female is culturally disapproved. Serving of liquor, as deposed by Sukhwinder Singh (PW-4) which is true, envisages that appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) were prepared by appellant No. 1 (Gurpreet Kaur) for killing her husband namely Budh Singh (deceased).

(52) For executing this plan of killing the deceased, a sum of Rs. 1.00 lac was settled, but that amount was not given in advance. May be, it was to be given, later on, after the execution of plan of killing Budh Singh (deceased). Extra judicial concession made by appellant No. 1 (Gurpreet Kaur) is binding on appellants Nos. 2 and 3, under Section 30 of the Indian Evidence Act. Apart from that, extra judicial confession made by appellant No. 1 (Gurpreet Kaur) before PW-1 (Hari Singh), is not the only evidence in this case.

(53) As already held, appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) slept at the place of occurrence, where Budh Singh (deceased) also slept. Plea of *alibi* has been taken by the appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram). It is their case that they were present at Ludhiana on the night of occurrence. No cogent evidence has come in defence to shatter the evidence of Sukhwinder Singh (PW-4) that appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) were lastly in the company of the deceased (Budh Singh) at the place of occurrence.

(54) When once, it is proved through the testimony of PW-4 (Sukhwinder Singh) that appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) were seen in the company of the deceased (Budh Singh), it was for them to prove that, as to when they departed from his company and whose company, the deceased (Budh Singh) came after their departure from the place of occurrence. Since the deceased and appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) were together at the place of occurrence, it is for the latter to prove, as to how the former turned into corpse and

how, he received injuries. It is not their case that some intruders intruded into the house of the deceased (Budh Singh) and committed his murder.

(55) A gap between the time as which Sukhwinder Singh (PW-4) saw the appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) and Budh Singh (deceased) together and when the corpse of Budh Singh (deceased) was found, is not very long. Even, the prosecution case is not entirely based on last seen evidence of Sukhwinder Singh (PW-4). Rather the evidence of last seen of PW-4 (Sukhwinder Singh) corroborates the evidence of extra judicial confession suffered by the appellant No. 1 (Gurpreet Kaur) before PW-1 (Hari Singh) to the effect that she and her co-appellants killed Budh Singh (deceased) and she hired her co-appellants to kill her husband.

(56) It has been held by the Hon'ble Chhattisgarh High Court in the case of *Dilkeshwar versus State of Chhattisgarh* bearing Criminal Appeal No. 789 of 2003, decided on 25.01.2010 that it has become obligatory on the appellants to satisfy the court as to how, where and in what manner, deceased parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstance, in which, they parted company. This judgment fully applies to the facts and circumstances of this case as the appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) have failed to discharge this onus.

(57) When appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) stayed in the house of the deceased (Budh Singh) it was required of them to leave the house in the morning after informing the appellant No.1 (Gurpreet Kaur). They at their own left the place of occurrence and that proves their complicity that they were brought to the place of occurrence by the appellant No. 1 (Gurpreet Kaur) for killing the deceased (Budh Singh). They were identified by Sukhwinder Singh (PW-4) when they took meal and liquor at his house. He cannot be held to be an interested witness.

(58) The learned trial Court rightly placed reliance upon *Namdeo versus state of Maharashtra (5)*; wherein, it was held that in a murder case, son of the deceased cannot be treated as interested witness and the accused was convicted solely on the basis of testimony of his son. So, the testimony of Sukhwinder Singh (PW-4) cannot be repelled that establishes the presence of the appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) in the house of the deceased (Budh Singh) whose death is homicidal and unnatural. Injuries found by Dr. Shiv Raj Rekhi (PW-5) on his person cannot be held to be self-suffered.

(59) So, the appellant No.1 (Gurpreet Kaur) hatched a conspiracy with appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) and hired them for assassinating her husband Budh Singh (deceased). The respondent, thus, has been able to prove that appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) killed the deceased (Budh Singh) after hatching a conspiracy in this regard with appellant No.1 (Gurpreet Kaur), who is the wife of the deceased (Budh Singh). Appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) were to charge money from appellant No.1 (Gurpreet Kaur) for executing the plant of assassinating her husband.

(60) The learned trial Court, thus, rightly held all the three appellants guilty of hatching conspiracy, as also, of murdering the deceased, thereunder. There is, thus, no illegality and impropriety in the impugned judgment and order of sentence, which are, hereby, upheld and affirmed.

(61) Resultants, the appeal fails and is, hereby, dismissed.

(62) The sentences of imprisonment of the appellants Nos. 2 and 3 (Ashok Kumar and Ganga Ram) were suspended by this Court *vide* orders dated 20.10.2011 and 24.08.2011, respectively and they are now on bail. They be taken in custody, forthwith, for undergoing remaining portion of their sentences.

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**S. Gupta**

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(5) 2007 (2) RCR (Cr.) 893