

Cr1.A.No. 19 OF 2002  
.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp  
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PART-HEARD@@  
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ITEM No.101 COURT No. 6 SECTION IIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Criminal Appeal No. 19 of 2002@@  
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Rajesh @ Kala & Anr. Appellants

VERSUS

State of Haryana Respondents

(With office report)

Date : 03/10/2002 This appeal was called on for hearing today

CORAM :

HON'BLE MR. JUSTICE U.C. BANERJEE  
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s) Mr. Ranjit Kumar, Sr. Adv.  
Mr. B.S. Jain, Adv.  
Mr. Ajay Veer Singh, Adv.  
Dr. (Mrs.) Vipin Gupta, Adv.  
Mr. Shahid Hussain, Adv.  
Mr. Goodwill Indeevar, Adv.

For Respondent(s) Mr. J.P. Dhanda, Adv.  
Ms. Raj Rani Dhanda, Adv.  
Mr. Sunder Khatri, Adv.

UPON hearing counsel the Court made the following  
O R D E R

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Mr. Ranjit Kumar, learned senior counsel appearing for the appellants, resumed his arguments at 11.25 a.m. and concluded at 11.40 a.m. Mr. J.P. Dhanda, learned counsel for the State, commenced his arguments thereafter and concluded at 12.45 p.m.

The criminal appeal is allowed.

The appellant shall be released forthwith, if not required in any other case.

(T.I. Rajput)  
Court Master

(Shelly Sengupta)  
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 19 of 2002@@  
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Rajesh @ Kala & Anr. ...Appellant (s)

Versus~

State of Haryana ....Respondent (s)

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Three specific instances have been taken note of in the matter of conviction of the accused persons against which this Court has been approached under Article 136 of the Constitution. The three instances, noticed above, are: (i) last seen together at 5.30 a.m.; (ii) extra-judicial confession; and (iii) the recovery of the cycle.

The first and the third instances have neither been dealt with nor relied upon by the High Court but the entire stress has been on the extra-judicial confession.

In Narayan Singh vs. State of Madhya Pradesh (1985 (4)@@  
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S.C.C. 26), this court expressly observed that it is not open to any court to start with a presumption that extra-judicial confession is a weak piece of evidence. In paragraph (7) of the Report, this Court observed:

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"7. 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 of 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."

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In Baldev Raj vs. State of Haryana (1991 Suppl.(1)@  
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S.C.C. 14), this court further stated the law as below:

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"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

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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 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."

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Subsequently, however, this court in State of Punjab@  
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vs. Gurdip Singh (1999 (7) S.C.C. 714), to which one of us@  
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(Banerjee,J.) was a party, stated that though apparently there may seem to be some expression of divergence but on the totality of the situation, the question of there being any difference of expression of opinion does not arise, since Kavita vs. State of Tamil Nadu (1998 (6) S.C.C. 108) in no@@

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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.

The law thus seems to be well settled as regards the evidentiary value of the extra-judicial confessions. At this  
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juncture, however, let us refer to the factual context in slightly more greater detail.

On 24th June, 1992 at about 7.00 p.m., Virender Kumar (PW-5) made a statement to the police that he was living in a house at Sonapat stand, Rohtak and that on 22nd June, 1992, he and his brother Dilawar Singh, aged 13/14 years, and Lakhi Ram accused, who was on visiting terms with them, had slept on the roof of that house, whereas his father and younger brother had slept downstairs. At about 4.30 a.m., next morning, he had gone to his farm leaving Dilawar Singh and Lakhi Ram behind and when he had returned at 9.30 a.m., he found both of them missing and that efforts by him and his father to find the duo had remained unsuccessful. He, accordingly, suspected that Lakhi Ram must have lured his brother away and on this statement, a case under Section 364 of the Indian Penal Code was registered. During the course of investigation, the police recorded the statement of other witnesses from which it transpired that Dilawar Singh had been killed by Lakhi Ram and four other accused persons and that his dead body had been thrown into a canal thereafter. The motive suggested by Sandeep Singh (PW-12) was that three of the accused Ram Bhaj, Balraj and Lakhi Ram had kidnapped Dilawar Singh for the purpose of extracting ransom from his family. On completion  
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of the investigation, charges under Section 364 read with Section 120-B I.P.C. and Section 302 read with Section 120-B I.P.C. were framed and the accused persons pleaded not guilty and, thus, brought to trial.

The learned Sessions Judge found that the prosecution has failed to prove Ram Bhaj, since deceased, and Balraj to have ever conspired with Lakhi Ram, accused, to eliminate Dilawar Singh. So, accused Balraj was ordered to be acquitted for all the offences for which he had been charged with.

The learned Sessions Judge, further, was pleased to observed that the charge under Section 364 of the Indian Penal Code also could not be established against the trio. Similarly, there was nothing on record to show that the injuries caused by Vijay accused alone proved fatal. So, the charge of murder against Vijay accused alone does not stand established. Similarly, the charge of kidnapping and murder in pursuance of the criminal conspiracy allegedly hatched by Balraj, Lakhi Ram and Ram Bhaj, accused, could not stand established against these three accused and charge under Section 364 read with Section 120-B I.P.C. and Section 302 read with Section 120-B I.P.C. does not stand established. The only charge, thus, according to the learned Sessions Judge, survived and stands established was under Section  
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302/34 I.P.C. against Lakhi Ram, Rajesh and Vijay and the aforesaid trio were held guilty of the offence of causing murder of Dilawar Singh in furtherance of their common intention.

It is on this order of conviction, the learned Judge was pleased to sentence the three named accused, Lakhi Ram, Rajesh and Vijay to undergo imprisonment for life and to pay a fine of Rupees five hundred each with a default clause.

Hence, aggrieved by the impugned order, the accused persons filed appeals before the High Court and the High court, however, did not find any merit in the appeals filed separately by the three named accused persons against the order of the learned Sessions Judge.

Two of the accused persons, namely, Rajesh and Vijay, however, subsequently moved this court under Article 136 of the Constitution. Hence, the appeal upon the grant of leave.

The entire emphasis, as noticed above, of the High Court was on the extra-judicial confession. The extra-judicial confession was supposed to have been made on 27th June, 1992 before one Dilbagh Singh (PW-11), aged about 62 years, and agriculturist by occupation in the village Kutana-Bohar. Admittedly, Vijay and Rajesh belong to place called 'Najafgarh', now a part of the Municipal Corporation of ...7/-

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Delhi and the residence of Dilbagh Singh happened to be in village Kutana-Bohar, as noticed above, which is at a distance of about seventy kilometers from Najafgarh.

Certain chain of events would be of some importance in the factual context of the matter, namely that Dilawar Singh was supposed to have been taken away on 22nd June, 1992 for a ransom. The accused Lakhi Ram and Dilawar Singh (since deceased) were last seen on 23rd June, 1992. First Information Report was lodged on 24th June, 1992, whereas the body was found on 25th June, 1992. It is on the recovery of the dead body that an extra-judicial confession was supposed to have been made before Dilbagh Singh on 27th June, 1992. Incidentally, the deceased's cycle, which happened to be used by the deceased as described in the issue of last seen together, was recovered from the canal on 27th June, 1992 also. The evidence of Dilbagh Singh depicts that the confession was oral in nature. There is no corroboration of such a confession at any stage. While it is true, as noticed above, that the law seems to be well settled that whereas confession by itself may be a substantive piece of evidence but the attending circumstances must be such that they create some feeling of trustworthiness and becomes an acceptable piece of evidence before the court. The High Court recorded ....8/-

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its acceptance and it is on this score that Mr. Ranjit Kumar, learned senior counsel appearing for the appellants, rather emphatically contended that on perusal of the evidence, as tendered by Dilbagh Singh, it itself contradicted its acceptability and the High Court was in manifest error in putting reliance thereon. Mr. Ranjit Kumar drew the attention of this court that when three accused persons were supposed to have confessed, they can never have confessed independently of each other and that there should be only one confession wherein all three of them would participate. In the contextual facts, we find some factual justification in the submission of Mr. Ranjit Kumar and it is these three separate instances of confession, as stated by Dilbagh Singh,

which Mr. Ranjit Kumar contended should create a doubt in mind of the court as regards the genuineness and the creditworthiness together with its acceptability.

The submission of Mr. J.P. Dhanda, learned counsel appearing in support of the State, however, runs to the contrary and it is Mr. Dhanda who has very seriously and elaborately taken us through the entire confession and contended that there is nothing inconsistent with the human behaviour or conduct which would entitle the court to come to a different conclusion. For convenience sake, we record ...9/-

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hereinbelow some extracts of the confession:

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"On 27.6.92, Yajbir Singh Sarpanch and myself were sitting at my house. At about 6.00 P.M., Lakhi, Vijay and Rajesh came there. These accused are present in the court today. Lakhi disclosed that he was on visiting terms with Chander Bhan of Sonapat stand, Rohtak and sometimes he sleeps at his house. On 21.6.92, he further stated, went to Najafgarh and disclosed to him that a boy named Dilawar aged 13-14 years had to be murdered. Thereafter, Vijay called Rajesh to Najafgarh, Rajesh and Vijay agreed to commit the murder of Dilawar. Both Rajesh and Vijay agreed to reach Sonapat stand Rohtak on 22.6.92 and on that day they reached at Sonapat stand, Rohtak. Thereafter, Lakhi told that he directed Vijay and Rajesh to reach double canal bridge Delhi Bye pass, Rohtak at 5.00 A.M. and that he would also reach there alongwith Dilawar at 5.00 A.M. Lakhi told me, that he slept at the house of Chander Bhan alongwith Dilawar, on their roof. There Virender, brother of Dilawar was also sleeping. Virender went to his field at about 4.30 A.M. on 23.6.92. He further told that he took Dilawar on their cycle on the pretext of easing towards the bridge of the canal. When Lakhi alongwith Dilawar reached the bridge Rajesh and Vijay met him on a scooter (riryra make) at the bridge. He further disclosed that Rajesh and Vijay parked the scooter on the side of the bridge. Meanwhile one Ram Narain came and enquired from Lakhi and other as to what were they doing. Ram Narain was put off by Lakhi by saying that they were going to ease themselves. He further stated that Lakhi alongwith Rajesh and Vijay went on foot alongwith the cycle towards canal. After going 1 K.M. towards Kanheli Head, Lakhi took Dilawar near a tree. Thereafter he told me that he untied a rope from the cycle. Thereafter he disclosed that he caught hold the hands of Dilawar and Rajesh caught hold of feet of Dilawar. Vijay tied a rope on the neck of Dilawar. When the rope was being tied, Dilawar

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shouted. Thereafter Lakhi gave a kick blow on

the testicle of Dilawar and Vijay gave a brick blow on the head of Dilawar. Rajesh also gave 1-2 kick blows to Dilawar. On account of the injuries, Dilawar succumbed to the injuries. Thereafter vijay untied the rope. He further disclosed that thereafter all the three accused, namely Lakhi, Rajesh and vijay threw his dead body in the canal. Thereafter Lakhi sent away Rajesh and Vijay to Najafgarh. Lakhi came back to his house. Lakhi further told when he came to know that Chander Bhan father of Dilawar had suspected him of committing the murder of Dilawar, he went to Najafgarh on 23.6.92 and told them about this suspicion to Vijay and Rajesh and the fact that the police was in search of them. Thereafter, Lakhi advised that they should approach me and Yajbir Sarpanch for help and for producing them before the police. (At this the witness stated that Lakhi had gone to Najafgarh on 27.6.92 and not 23.6.92 as stated above). Lakhi, Rajesh and Vijay asked me and Yajbir Sarpanch that we should produce the accused before SHO, P.S. Civil Lines, Rohtak, as he was known to us."

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Significantly, the portion above-cited stands practically word for word as regards Vijay and in the similar fashion as regards Rajesh. So three separate confessions while in one meet or meeting have been said to have effected before Dilbagh Singh. This is rather strange and we record our due concurrence with the submission of Mr. Ranjit Kumar, learned counsel for the appellants, that the High Court has committed a manifest error in the matter of acceptance of the extra-judicial confession to be the basis of conviction. There is no independent evidence as such. Apart therefrom, the entire case hinges on circumstantial evidence and the law ...11/-

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as regards the issue of circumstantial evidence is also well settled that success of the prosecution on the basis of circumstantial evidence will depend on the availability of a complete chain of events so as not to leave any doubt for the conclusion that the act must have been committed by the accused person. The evidence on record, ascribed to be circumstantial ought to justify the inferences of the guilt from the incriminating facts and circumstances which are incompatible with the innocence of the accused or guilt of any other person. While it is true that there should not be any missing links in the chain of events so far as the prosecution is concerned, it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proved facts. Circumstances of strong suspicion without however, any conclusive evidence are not sufficient to justify the conviction and it is on this score that great care must be taken in evaluating the circumstantial evidence. In any event, on the availability of two inferences, the one in favour of the accused must be accepted. [vide Pawan Kumar vs.@@  
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State of Haryana (2001 (3) S.C.C. 629)].@@  
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The law pertaining to the circumstantial evidence, as noticed above, thus renders the situation quite clear that the

circumstances must thus pointedly point to the accused and to no other person. It is on this score, Mr. Ranjit Kumar, learned counsel, contended that circumstances noticed and tendered by way of evidence in the fact situation of the matter under consideration does not pointedly point out the accused as the guilty persons. There are missing links and snaps in the chain. On the wake of the aforesaid, Mr. Ranjit Kumar contended that the High Court has fallen in manifest error. On a perusal of the evidence on record and on a perusal of the order as passed by the learned Sessions Judge as also by the High Court, we find some substance in the contention of Mr. Ranjit Kumar that there are some missing links which would entail the order of acquittal as regards the accused persons.

On the wake of the aforesaid, the appeal succeeds. The order of the learned Sessions Judges as also that of the High Court stand set aside and quashed.

The appellants shall be released forthwith, if not required in any other case.

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(U.C. Banerjee)@@  
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New Delhi,  
October 03, 2002.