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Cr1.A.No. 1408 OF 1999
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ITEM NO.103 COURT NO.10 SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No.1408 of 1999@@
EE

MOHAR SINGH ... APPELLANT(S)

VERSUS

STATE OF PUNJAB ... RESPONDENT(S)

(WITH OFFICE REPORT)

Date: 10.10.2001. This/These matter(s) were called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

For the Appellant(s) Mrs. K. Sarada Devi, Adv.

For the Respondent (s) Mr. S.K. Sabharwal, Adv. for
Mr. Rajeev Sharma, Adv.

UPON hearing counsel the Court made the following
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The appeal is allowed in terms of the signed order. Conviction and sentence of the appellant stands set aside. The appellant shall be released forthwith if not required for any other matter.

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(K.K. Chawla) (D.D. Jindal)
Court Master Assistant Registrar

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1408 OF 1999@@

Mohar Singh ... Appellant

versus

State of Punjab ... Respondent

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The appellant in this case was convicted by the trial Court under Section 302 I.P.C. and sentenced to undergo imprisonment for life. The appeal to High Court was also dismissed and hence this appeal by grant of special leave before this Court. Admittedly, the entire case rests on the circumstantial evidence and the learned advocate appearing in support of the appeal rather strenuously contended that since there are certain snags in the chain of evidence and in any event the extra-judicial confession said to have been made after 17 days, question of reliance either on the extra-judicial confession or on the circumstantial evidence would not arise and hence the trial court ought to have returned a clear verdict of acquittal in favour of the appellant by the High Court.

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The prosecution case briefly was that the accused Mohar Singh, his wife and his son and his brother in law respondent No.1, Gurbachan Singh were last seen by Nishan Singh abusing Gurpreet Singh outside the small gate of Mohar Singh's house.

It has been alleged that the whereabouts of the deceased Gurpreet Singh was not known thereafter and eventually the dead body of the deceased was found in the abandoned well situated just outside the house of Mohar Singh. It is at this juncture the extra-judicial confession which is said to have been made by the accused persons ought to be noticed: whereas the date of occurrence being 10th November, 1994, the extra-judicial confession is supposed to have been made on 27th November, 1994 before one Tarlok Singh, a former Sarpanch of another village. It is stated that the accused visited the house of Tarlok Singh and both the appellant and accused No.2 Gurbachan Singh separately made extra-judicial confession to the effect that they had committed the murder of Gurpreet Singh and upon hearing the details thereof, Tarlok Singh thereafter took both the accused to the police station

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and produced them before S.I. Sardara Singh being PW.7. It is stated that both the accused were involved in taking away the gold ring and the wrist watch from the deceased and the same were taken into possession. During the trial both the accused pleaded not guilty. The learned Sessions Judge, Sangrur on 30th March, 1996 sentenced the accused persons for life imprisonment.

They were also convicted under Sections 201 and 404 IPC.

The records depict that against the judgment of the learned Sessions Judge both the accused have preferred criminal appeal before the High Court of Punjab and Haryana and the High Court by its order dated 30th July, 1997 allowed the appeal in part, thereby set aside the conviction and sentence passed against accused Gurbachan Singh but maintained the conviction of the appellant Mohar Singh by an order of dismissal of his appeal and hence the present appeal as noticed above.

The records depict that the doctor who conducted the post-mortem deposed before the trial ..4/-

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court and gave the definite evidence to the effect that there was extravasation of blood into the subcutaneous tissues on the front of the neck and extravasation of blood was also present in the adjacent muscles of the neck. The doctor also found that there was fracture of thyroid cartilage as well as hyoid bone. There was also fracture of tracheae. Both the lungs were congested and death in his opinion was due to shock, due to asphyxia, due to strangulation which was ante-mortem in nature. The doctor's further evidence, however, was that "since the dead body was in advance stage of decomposition and the skin had been peeled off from the neck and other parts of the dead body, so ligature mark on the skin was not found on the neck."

As noticed above, the case rests on the circumstantial evidence and the circumstances so relied upon by the prosecution are as follows:-

a. that the appellant had due motive for committing the murder of the deceased;

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b. that he had made an extra-judicial confession of his guilt before PW.4 on 27th November, 1994; and

c. that on his pointing out a ring was recovered near his house.

Be it noted that the prosecution case hinges entirely on the extra-judicial confession. Let us however analyse the same with a little bit of detail:-

The confession was effected to a man who happened to be a former Sarpanch of another village. The confession is supposed to have been made after 17 days of the date of the incident and the evidentiary value of the recovery on the basis of such confession however is to be further tested. A ring was said to have been recovered but the ring has not been identified by any witness. This is not a confession on which a prosecution can be maintained. The confession must have the capacity to enable the Court to come to a conclusion unhesitatingly in the matter of involvement

of the accused for the commission of the offence.
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Apart therefrom the oral evidence as is available on record from PW.2 that he has seen the deceased in front of the house of the appellant Mohar Singh and the appellant using abusive language to the deceased asking him as to why he was present at the premises in question does not however inspire confidence of the Court.

In Baldev Raj v. State of Haryana (1991 Supp.@@
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(1) SCC 14) this Court stated:

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"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."
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The decision of Baldev Raj (supra) came to be considered by this Court in Gurdeep Singh's case (State of Punjab v. Gurdeep Singh: 1999 (7) SCC 714), wherein upon reliance on the decision in Baldev Raj (supra) this Court in paragraph 17 of the Report observed:

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"17. There is no denial of the fact that an extra-judicial confession is admissible in evidence and the Court in appropriate cases can rely thereon to the

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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 a piece of substantive evidence."

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The next piece of evidence is however on the

recovery of the dead body after three days by PW.2. The High Court while dealing with the evidence and passing an order of acquittal so far as accused No.2 is concerned, did not however deal with this aspect of the matter but relied heavily on the extra-judicial confession on which we are not in a position to have our confidence and lay stress so as to concur with the order of conviction and sentence as passed by the High Court against the appellant.

The evidence on record particularly the extra-judicial confession does not inspire our confidence and in the case of circumstantial evidence all the circumstances should be established by ...8/-

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independent evidence and they should form a complete chain without there being any snap. We, however, find many missing links in the chain. The appeal is therefore allowed. Conviction and sentence of the appellant stands set aside. The appellant shall be released forthwith if not required for any other matter.

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.....J.
(Umesh C. Banerjee)

.....J.
(K.G. Balakrishnan)

New Delhi,
October 10, 2001.