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BALWINDER SINGH

v.

STATE OF PUNJAB

NOVEMBER 9, 1995

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[DR. A.S. ANAND AND S.C. SEN, JJ.]

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Indian Penal Code, 1860—Sections 302 and 201—Conviction for offence under—Legality of—No direct evidence—Circumstantial evidence—Not established—Delay of 5 days in lodging FIR—Conviction not legally sustainable.

Indian Evidence Act, 1872 :

Evidence—Murder case—Circumstantial evidence—Conviction based on—Sustainability.

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Extra Judicial Confession—Weak type of evidence—Independent corroboration required to rely upon it.

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The appellant was convicted for offences u/ss 302/201 Indian Penal Code and sentenced to suffer imprisonment for life with a fine of Rs. 2,000.

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The prosecution case was that the appellant and his mother conspired to put an end to the life of his two daughters R & P aged about 7 years and 2 1/2 years and the appellant took away both the daughters stating to his wife that he would return only after killing them. The dead body of one daughter R was recovered from a canal. The other daughter, however, was not found either dead or alive. During the investigation the police took into possession some bones and bangles from the place where the dead body was cremated on the basis of a disclosure statement made by the appellant. Appellant and his mother were charged for an offence under Section 120-B IPC, for conspiring to commit the murder of R & P. The appellant was also charged for an offence u/s 302/201 IPC for committing the murder of his daughter and cremating her dead body to screen himself from the offence. He was also charged for an offence u/s. 302 IPC for the murder of his second daughter P. The Trial Court found that the charge of conspiracy u/s 120-B was not established and consequently both the appellant and his mother were acquitted of the said charge. The Court held that

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the charge against the appellant for an offence u/s. 302 for committing the

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murder of P had also not been established and therefore acquitted the appellant of the said charge while convicting and sentencing him for the offences u/s 302/201 for the murder of R.

This appeal u/s 14 of the Terrorist Affected Areas (Special Courts) Act, 1984, had been filed against the judgment of his conviction and sentence.

The appellant denied the prosecution allegation and stated that he had been falsely implicated. There was no direct evidence in the case and the prosecution relied upon the circumstantial evidence to connect the appellant with the crime. The circumstances relied on were the evidence of 'last seen together' based on the evidence of PW2, PW4 and PW5; extra judicial confession made by the appellant to PW-3; the recovery of dead body of R from the canal and its claim by the appellant and disclosure statement made by the appellant leading to the recovery of bones of a child from the place where the appellant had cremated the dead body of R.

Allowing the appeal, this Court

HELD : 1.1. In a case based on circumstantial evidence, it is now well settled that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence the Court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, howsoever strong they may be, to take the place of proof. [16-H; 17-A-B]

1.2. In the instant case none of the four circumstances relied upon by the prosecution to connect the appellant with the crime had been established by the prosecution. The Trial Court was not justified in convicting the appellant for the offence u/s 302/201. PW-2, wife of the appellant deposed about the quarrels between her on the one side and the appellant and his mother on the other side on account of the birth of the daughters only. She stated that the appellant and his mother conspired to do away with her two daughters because they considered the birth of the female to

A be a curse; that the appellant took away both the daughters stating that he would return only after killing them; that on the next day her mother in law informed her that her daughters had been killed by the appellant and thrown in the canal and when the appellant returned to the house, he disclosed to her that he had killed both the daughters and had cremated R.

B During her cross-examination she admitted that she had never earlier complained about the quarrels or the beatings given to her by the appellant and his mother to anyone. In her statement recorded u/s 161 Criminal Procedure Code, also the cause of quarrel had not been stated by her. She did not report the matter to the police nor even informed her parents about the murder of the children for about 4 days. This conduct was rather

C unnatural for a mother, keeping in view the earlier quarrels. The prosecution sought corroboration of the evidence relating to the taking away of the two daughters by the appellant as deposed to by PW2 from the statement of PW-4 and PW-5. The Trial Court did not place any reliance upon the statement of PW4 because of the material contradiction between her testimony and the statement of PW-2. The evidence of PW5 father-in-law of

D sister of appellant did not inspire confidence. He deposed against the appellant because of his strained relations with appellant's sister. [17-D-H, 18-A-C]

E There was a delay of 5 days in lodging the first information report. The delay was utilized by the complainant party in introducing interested witnesses like PW4 and PW5 in the case. Their testimony could afford no corroboration to the otherwise untrustworthy testimony of PW2. The Trial Court erred in relying upon the statement of PW2 and PW5, ignoring the basic infirmities in their evidence and overlooking the delay in lodging of the FIR. The prosecution failed to establish that the appellant had taken

F away his two daughters in the manner alleged by it. The evidence to establish the circumstances of 'last seen together' had not been established beyond a reasonable doubt. [23-F; 17-D-H; 18-A-B; E; 19-A; B; 20-D-E]

G 1.3. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances its credibility becomes doubtful and it loses its importance. The courts generally look for independent reliable corroboration before placing any reliance upon an extra judicial confession. [20-G]

H The Trial Court relied upon the extra-judicial confession allegedly

made by the appellant to PW-3 to the effect that he had killed his daughters and had cremated the dead body of R, to connect the appellant with the crime. It found corroboration of the statement of PW-3 from the evidence relating to the recovery of the dead body from the canal and the disclosing statement allegedly made by the appellant leading to the recovery of the bones from the place behind Gurdwara, besides the statement of PW-2.

[20-H, 21-A]

PW-3 claimed to be the Pardhan of the area and stated that she was a social worker. According to her disposition, the appellant had made an extra judicial confession to her when she visited his house on learning from the neighbours that the appellant had killed his daughter. PW 3, however, lodged the complaint with the police only after a delay of three days. In view of the hostility which the appellant had with PW3, for leading his wife astray, it was difficult to accept that the appellant could have made any extra judicial confession to her. The manner in which the *judicial confession* was alleged to have been made and the silence of PW3 for three days in disclosing the same to the police, even though she had admittedly been with the police regarding some other case, rendered it unsafe to reply upon her statement. This unexplained long delay in lodging the first information report detracts materially from the reliability of the prosecution case in general and the testimony of PW3 in particular. [21-B, G]

The alleged extra judicial confession was surrounded by suspicious circumstances and the prosecution had not been able to establish that the appellant had made any extra judicial confession to PW3 and therefore this circumstance remained unestablished. [20-F-H; 21-A-C; F-H; 22-H; 23-A]

1.4. Even the third circumstance relating to the recovery of the dead body, it being claimed by the appellant and its subsequent cremation by him had remained unestablished. The two witnesses relied upon were PW6 and PW7. Neither PW6 nor PW7 knew the appellant from before. No identification parade was held to identify the appellant as the person who had approached PW6 and PW7 and had claimed the dead body to be that of his daughter. It was incumbent upon the prosecution to have held an identification parade for proper identification of the appellant by these two witnesses. No explanation had been given for not holding such a parade. The identification of the appellant by PW6 and PW7, as the person who had claimed the dead body, in court, about 9 months later, in the absence of any earlier identification, was not sufficient to hold that the appellant

A had claimed the dead body to be that of his child. The evidence being of a doubtful nature had to be ruled out of consideration to connect the appellant with the crime. [22-C; H; 23-A-C]

B 1.5. The last circumstance of the disclosure statement of the appellant, leading to the recovery of the bones of the deceased was not established. The Trial Court was justified in ruling out of consideration the disclosure statement and the consequent recovery of the bones as PW 2 had already visited the place of cremation much before the case was registered and that bones were taken into possession from the alleged place of cremation which was an open place. The prosecution evidence was not specific as to whether even the bones recovered were those of deceased R. The witnesses to the recovery of the bones were withheld and not produced at the trial. These infirmities created a doubt about the correctness of the prosecution case regarding the making of any disclosure statement by the appellant. [23-E-F]

D From the very opening sentence of the judgment of the Trial Court, it appeared that the Trial Court got swayed by emotional consideration and allowed suspicion, surmises and conjectures to take the place of legal proof. Conviction recorded was unsustainable. [24-C-D; F]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 192 of 1985.

From the Judgment and Order dated 31.1.85 of the Special Court, Patiala in S.C.No. 11P of August 8, 1984.

F Goodwill Indeevar for the Appellant.

Mrs. Amita Gupta, R.L. Deo and R.S. Suri for the Respondent.

The Judgment of the Court was delivered by

G DR. ANAND, J. The appellant on conviction by the learned Judge, Special Court, Patiala for offences under Section 302/201 IPC was sentenced to suffer imprisonment for life and to pay a fine of Rs.2,000 and in default to suffer further RI for two years for the offence under Section 302 IPC and 2 years RI for the offence under Section 201 IPC. Both the sentences were, however, directed to run concurrently. Though this appeal H under Section 14 of the Terrorist Affected Areas (Special Courts) Act,

1984, he has questioned his conviction and sentence.

The prosecution case in brief is that the appellant and Smt. Tajinder Kaur, PW-2 were married about 10 years prior to the date of occurrence which allegedly took place on 18.3.1984. Two daughters Pinky and Rozy aged about 6-1/2 or 7 years and 2-1/2 years respectively were born out of this wedlock. Ajmer Kaur, mother of the appellant as well as the appellant were unhappy with Tejinder Kaur, PW-2 for giving birth to daughters only and both she and the appellant used to quarrel with Tajinder Kaur on that account, who was also given beating by the appellant on certain occasions. On 17.3.1984 there was one such quarrel. The appellant and his mother Ajmer Kaur conspired to put an end to the life of the two daughters and in pursuance thereof on March 18, 1984, the appellant took away both the daughters stating to PW-2 that he would return only after killing them. He reached bus-stand Patiala where he met Balwant Kaur, PW-4 and on her enquiry about the welfare of the children told her that he was taking away his daughters to kill them. Balwant Kaur PW-4 on hearing this went to the house of the appellant and informed Tajinder Kaur PW-2 about it. The appellant took the children to Ludhiana to the house of his sister Mohinder Kaur, DW-1 and after staying there for a few hours left the house saying that he was going to Rara Saheb. On 19.3.1984, Dr. Jaswant Singh PW-6 found the dead body of a female child in the canal at about 12 or 12.30 p.m. when he went there to ease himself. The dead body was taken out but no one who reached there from the adjoining villages could identify it. At about 4.30 or 5.00 p.m., the appellant also reached there and identified the dead body as of his own child. He took the dead body of Rozy and cremated her near Gurdwara Rara Saheb. The other daughter Pinky, however, was not found either dead or alive. Satya Walia PW-3, a social worker and a neighbour of the appellant and Tejinder Kaur PW-2 on coming to know about the murders from the neighbours and from an extra-judicial confession made by the appellant to her that he had murdered the girls and cremated the dead body of Rosy made a written complaint, Ex. PB, to the police on 23.3.1984 and on its basis the first information report was registered. The investigation of the case was taken in hand by ASI Iqbal Singh PW-9 who visited the village as well as the site of cremation. During the investigation the police took into possession some bones and steel bangles from the place where the deadbody of Rozy was cremated on the basis of a disclosure statement made by the appellant. After completion of the investigation, challan was filed against both the

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A appellant and his mother Smt. Ajmer Kaur. Both of them were charged for an offence under Section 120-B IPC, for conspiring to commit the murder of Rozy and Pinky. As already noticed the appellant was also charged with the offences under Section 302/201 IPC for committing the murder of Rozy and cremating her dead body to screen himself. He was also charged for an offence under Section 302 IPC for the murder of Pinky. The Trial Court after recording the evidence found that the charge of conspiracy under Section 120-B IPC was not established and consequently both the appellant and Ajmer Kaur were acquitted of the said charge. The Trial Court also found that the charge against the appellant for an offence under Section 302 IPC for committing the murder of Pinky had also not been established and therefore acquitted the appellant of the said charge while convicting and sentencing him for the offences under Section 302/201 IPC for the murder of Rozy. The appellant, in his statement under Section 313 Cr. P.C. had denied the prosecution allegations and stated that his wife was under the influence of Satya Walia PW-3 who was leading her estray and since the parents of his wife, Tejinder Kaur, PW-2 were greedy she used to earn money and handover the same to her parents. He had admonished his wife for going estray and keeping company with Satya Walia PW3 on a number of occasions. PW-2 had gone to her parents house at Sunam leaving the children behind. While he had gone to the market, the children left the house on their own and when he and his mother Ajmer Kaur after search did not find them, they sent a telegram to Tejinder Kaur PW2 and Sham Singh, on March 22, 1984. That with the connivance of Satya Walia, PW-3 he was falsely implicated in the case.

F There is no direct evidence in this case insofar as the murder of Rozy is concerned. The prosecution relied upon the following circumstances to connect the appellant with the crime in the Trial Court :

G (i) The evidence of "last seen together" based on the evidence of PW-2, Tejinder Kaur, Balwant Kaur, PW-4 and of Mohinder Singh, PW-5; (ii) Extra-judicial confession made by the appellant to PW- 3 Satya Walia. (iii) the recovery of dead body of Rozy from the canal and its claim by the appellant and (iv) disclosure statement made by the appellant leading to the recovery of bones of a child from the place where the appellant had cremated the dead body of Rozy.

H In a case based on circumstantial evidence, it is now well settled that

the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence the Court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, howsoever strong they may be, to take the place of proof. It is in the context of the above settled principles, that we shall analyse the evidence led by the prosecution.

(i) *Last seen together*

PW-2 Tejinder Kaur, wife of the appellant deposed about the quarrels between her on the one side and the appellant and his mother on the other side on account of the birth of the daughters only and went on to state that on March 18, 1984 the appellant and his mother conspired to do away with her two daughters, Rozy and Pinky, because they considered the birth of the females to be a curse. She deposed that the appellant took away both the daughters at about 12.30 p.m. or 1.00 p.m. on that day stating that he would return only after killing them. Soon thereafter, Balwant Kaur PW-4, went to the house of PW-2 at about 2.00 p.m. and told her that the appellant had met her at the bus stand and disclosed to her, on her enquiry about the well being of the children, that he was going to kill the daughters. On 19th March, 1984 her mother-in-law, Ajmer Kaur informed her at about 6.30 a.m. that her daughters had been killed by the appellant and thrown in the canal. On getting this information PW-2 proceeded towards her parents house at Sunam but she was brought back by her mother-in-law Ajmer Kaur from near the Modi College on a rickshaw. Both of them then went out in "search" of the children. The appellant returned to the house on 20th March, 1984 and on her enquiry from him about the children, he disclosed to her that he had killed both the daughters and had cremated Rozy behind the Gurdwara Rara Saheb and that the dead body of Pinky had not been found. On hearing this news, she started crying. Satya Walia, PW3 on hearing about the murders came to her house and asked the appellant about the children who disclosed to her that he had killed them. During her cross-examination PW-2 admitted that she had never earlier

- A complained about the quarrels or the beatings given to her by the appellant and his mother to anyone except to Satya Walia PW-3 but conceded that she did not disclose to Satya Walia PW-3 either that the cause of quarrels was on account of the birth of daughters. In her statement recorded under Section 161 Cr.P.C. also the cause of quarrel had not been stated by her and she was duly confronted with it. PW-2 also admitted that neither on 18th March, 1984 nor on 19th March, 1984 did she inform anyone about the incident and even though Satya Walia had met her on 19th March she did not tell her about it and that it was only on 20th March, 1984 that she had disclosed to Satya Walia PW-3 for the first time as to what had transpired on 18th March, 1984 and the information she had received from her mother-in-law on the morning of 19.3.1984. She did not report the matter to the police nor even informed her parents about the murder of the children till 23.3.1984. Her statement was recorded by the police only on 24th March, 1984. She admitted that she had visited Gurdwara Rara Saheb alongwith her mother-in-law on 20.3.1984 and had found ashes and bones there.

- D The prosecution sought corroboration of the evidence relating to the taking away of the two daughters by the appellant as deposed to by Tejinder Kaur PW-2 from the statements of Balwant Kaur, PW-4 and Mohinder Singh PW-5. The Trial Court did not place any reliance upon the statement of Balwant Kaur PW-4 and in our opinion rightly. Her statement does not inspire any confidence. Though PW-2 in her statement deposed that PW-4 was her mother's sister and had come to her straight from the bus stand on hearing from the appellant that he was going to kill the daughters, PW-4 Balwant Kaur in her cross-examination stated
- F "Tejinder Kaur is not related to me as such. My purpose of visit was to see Tejinder Kaur as directed by her mother." The prosecution, however, did not examine the mother of Tejinder Kaur to elicit "what direction" she had given to PW-4 and why. This material contradiction between her testimony and the statement of PW-2 Tejinder Kaur besides the improbability of the appellant making any statement to her renders her evidence untrustworthy.

- G So far as the evidence of PW-5 Mohinder Singh, the father-in-law of the sister of the appellant is concerned, the Trial Court found it to afford corroboration to the statement of PW-2. According to him, the appellant
- H had visited his house on 18.3.84 at about 4.00 or 4.30 p.m. alongwith his

daughters Pinky and Rozy and after taking tea had left the house informing him that he was going to visit Rara Saheb. During his cross-examination, PW-5 denied the suggestion that after marriage, his son Amrik Singh was residing separately from him and that he was not having good relations with his daughter-in-law, sister of the appellant.

This is the entire evidence relied upon by the prosecution in support of the first circumstance.

There was a delay of 5 days in lodging the first information report Ex. PB. On her own admission, PW-2 Tejinder Kaur was told by the appellant while taking away the girls on 18.3.1984 at about noon time that he was going to kill them. She, however, kept quiet. She did not protest let alone raise any hue and cry so as to prevent the appellant from taking away the daughters for killing them. She did not even disclose to anyone as to what the appellant had told her even though the appellant did not return home at night. On 19th March she learnt at about 6.30 a.m. from her mother-in-law Ajmer Kaur, a co-conspirator with her husband, that the appellant had killed the two daughters and thrown them in the canal. She still kept quiet and not only did she not raise any hue or cry she did not inform anyone including her parents and Satya Walia PW-3, who had admittedly met her on that day about the incident. This conduct is rather unnatural for a mother, keeping in view the earlier quarrels and the declarations made by the appellant of his intention to kill the daughters on 18.3.1984 itself. PW-2 also admitted in her cross-examination that she alongwith her mother-in-law Ajmer Kaur had gone out in search of the children to various places including Ragho Majra, where the maternal uncles of the appellant were residing. Why would Ajmer Kaur go with her, to search for the children, when she already knew that the appellant had killed them and thrown the dead bodies in the canal is not at all understandable? From the statement of PW-3 as contained in the FIR it emerges that when she came out of the house of the appellant, she had met PW-2 and Ajmer Kaur coming in a rickshaw and that both of them were weeping at that time. This conduct of Ajmer Kaur does not fit in with the prosecution case. PW-2 also admitted that she alongwith her mother-in-law had visited Gurdwara Rara Saheb on 20th March, 1984 itself and had seen the mortal remains of her child and that the appellant had also told her on returning home on 20.3.1984 that he had killed the girls, but still she did not lodge any complaint with the police or inform anyone about it. PW-2 could give no explanation for her silence. The evidence of PW-5, Mohinder

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A Singh, the father-in-law of the sister of the appellant does not inspire confidence. DW-1, Mohinder Kaur, wife of Amrik Singh, daughter-in-law of PW-5 asserted in her statement that the appellant had never visited her house in March 1984 alongwith his children and that when she came to know on March 23, 1984 that the children of her brother were missing from their house, she had visited his house. She stated that her father-in-law was residing separately from her and that she and her husband had separated from him within six months of their marriage. She and her husband were not even on visiting terms with her father-in-law. These assertions of DW-1 have remained unchallenged. There was, thus, no occasion for the appellant to go to the house of the father-in-law of her sister, with whom admittedly his sister was having strained relations and not visiting his sister at all on that day. In the face of the statement of DW-1, the correctness of the statement of PW-5 becomes doubtful. PW-5 appears to have come forward to depose against the appellant, who is the only brother of his daughter-in-law DW-1 Mohinder Kaur, possibly because of his strained relations with her. It appears to us that the delay in lodging the first information report was utilised by the complainant party in giving twist to the facts and introducing interested witnesses like PW-4 and PW-5 in the case. We are not impressed by their statements and find that the same can afford no corroboration to the otherwise untrustworthy testimony of Tejinder Kaur, PW-2. The Trial Court erred in relying upon the statements of PW-2 and PW-5, ignoring the basic infirmities in their evidence and overlooking the delay in the lodging of the FIR. The prosecution has failed to establish that the appellant had taken away his two daughters on 18th March, 1984 in the manner alleged by it. In our opinion the evidence led by the prosecution to establish the circumstance of "last seen together" has not been established beyond a reasonable doubt.

F (ii) *Extra-judicial confession* :

G An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with great deal of care and caution. Where an extra judicial confession is surrounded by suspicious circumstances its credibility becomes doubtful and it loses its importance. The courts generally look for independent reliable corroboration before placing any reliance upon an extra judicial confession.

H * The Trial Court relied upon the extra-judicial confession allegedly made by the appellant to PW-3 Satya Walia to the effect that he had killed his daughters and had cremated the dead body of Rozy, to connect the

appellant with the crime. It found corroboration of the statement of PW-3 from the evidence relating to the recovery of the dead body from the canal and the disclosure statement allegedly made by the appellant leading to the recovery of the bones from the place behind Gurdwara Rara Saheb, besides the statement of PW2.

PW-3 claims to be the Pardhan of Mohalla Preet Nagar and states that she is a social worker. According to her deposition, the appellant had made an extra judicial confession to her when she visited his house on 20.3.84 on learning from the neighbours that the appellant had killed his two daughters. PW-3, however, lodged the complaint with the police only on 23rd March, 1984 when not only had she learnt from the neighbours about the murder of the two girls by the appellant but the appellant had himself made an extra-judicial confession to her on 20.3.84 itself. PW3 admitted in her cross -examination that she was with the police in connection with the case of Darshana from 21st March to 23rd March, 1984 but could offer no explanation as to why she did not lodge the complaint with the police till 23.3.84. This delay also probabalises the defence version that after 22.3.84, when PW-2 and Sham Singh and others arrived from Sunam on getting the telegraphic information about the missing children, they falsely implicated the appellant with the help of PW-3.

Again, according to PW-3 when she met PW-2 and her mother-in-law on coming out of the house of the appellant after he had made an extra-judicial confession to her, Tejinder Kaur PW-2 started crying on seeing her while her mother-in-law Ajmer Kaur kept silent. This is an apparent improvement made by her at the trial since in her statement in the FIR Ex. PB, with which she was duly confronted, she had stated that both Tejinder Kaur and Ajmer Kaur were weeping and crying. When asked to explain this improvement at the trial, PW-3 stated that she had "nothing to say". In view of the hostility which the appellant had with PW-3, for leading his wife estray, we find it rather difficult to accept that the appellant could have made any extra-judicial confession to her. The manner in which the extra-judicial confession is alleged to have been made and the silence of PW-3 for three days in disclosing the same to the police, even though she had admittedly been with the police between 21st and 23rd March, 1984 renders it unsafe to rely upon her statement. This un-explained long delay in lodging the first information report Ex. PB detracts materially from the reliability of the prosecution case in general and the testimony of PW3 in particular. We find that the alleged extra-judicial confession is sur-

A rounded by suspicious circumstances and the prosecution has not been able to establish that the appellant had made any extra-judicial confession to PW-3 Satya Walia and therefore, this circumstance remains unestablished.

(iii) *Recovery of a dead body and its claim by the appellant as that of Rozy.*

B Though with the ruling out of the circumstances relating to the "last seen together" and "the making of extra-judicial confession", as not having been established, the chain of circumstantial evidence snaps so badly that it is not necessary to consider any other circumstance, but we find that even the third circumstance relating to the recovery of the dead body, and it being claimed by the appellant and its subsequent cremation by him has remained unestablished.

C The two witnesses relied upon by the prosecution in support of the 3rd circumstance are PW-6, Dr. Jaswant Singh and PW-7, Naib Singh. According to PW-6, on 19th March, 1984 when he had gone near the canal to ease himself, he noticed dead body of a female child in the canal. Tej Singh Panch, Santosh Singh and Naib Singh also arrived at the spot and the dead body was taken out of the canal. None out of those who had, by that time assembled at the spot, could identify the child whose dead body was recovered. The Chowkidar of the village was sent to the adjoining villages for ascertaining the identity of the child. However, no one was able to identify the child. The appellant went to the spot at about 5.00 p.m. and stated that "his children had fallen in the canal and he was in search of them". He identified the dead body as that of his daughter Rozy. He was given custody of the dead body. He wanted to take the child to Patiala but stated that he was a poor person and had no money. Persons who were present there contributed some money and gave it to him to take the dead body to Patiala. That later on he came to know from some "other persons" that the appellant had cremated the dead body near the drain. Naib Singh PW-7, who has a shop situated on the canal bank of Rara Saheb spoke on the same lines as PW-6. He deposed that at about 12.00 noon or 12.30 p.m. he came to know about the presence of the dead body of a child. The dead body was recovered from the canal. No one was able to identify the dead body till the appellant arrived there at about 5.00 p.m. and identified the body to be that of his child. The child was handed over to the appellant, who was also given some money on his stating that he was a poor person and did not have any money to take the dead body to Patiala.

Admittedly, neither PW-6 nor PW-7 knew the appellant from before.

H No identification parade was held to identify the appellant as the person

who had approached PW-6 and PW-7 and had claimed the dead body to be that of his daughter. It was incumbent upon the prosecution to have held an identification parade for proper identification of the appellant by these two witnesses. Not only did it fail to hold an identification parade but the prosecution also failed to give any explanation for not holding such a parade. The identification of the appellant by PW-6 and PW-7, as the person who had claimed the dead body, in court, about 9 months later, in the absence of any earlier identification, loses much of its importance and is in any event not sufficient to hold that the appellant had claimed the dead body to be that of his child. Thus, considered in the light of the above discussion, we find that the prosecution has not been able to establish the circumstance relating to the recovery of the dead body or it being claimed by the appellant to be that of his child. It cannot be said with any amount of certainty that the dead body found by PW-6 and PW-7 was that of Rozy or that the appellant had claimed the dead body to be that of his child. The evidence is of a doubtful nature and has to be ruled out of consideration to connect the appellant with the crime.

(iv) *Disclosure statement* :

The last circumstance relied upon by the prosecution is the disclosure statement of the appellant, leading to the recovery of the bones of the deceased. The Trial Court ruled out of consideration the disclosure statement and the consequent recovery of the bones and placed no reliance on it. The Trial Court opined "At the outset it may be stated that in this case no importance can be attached to the disclosure statement made by Balwinder Singh accused and in consequence thereof recovery of the bones. Tejinder Kaur PW had already visited the place of cremation much before the case was registered. Be that as it may, there is no reason to doubt that bones were taken into possession from the alleged place of cremation which is admittedly an open place." We agree with the Trial Court.

That apart, the prosecution evidence is not specific as to whether even the bones which were recovered from the place of cremation behind Gurdwara Rara Saheb were those of Rozy. According to PW-6 and PW-7, the age of the dead body of the child which was recovered from the canal was about 4 or 4-1/2 years. According to the evidence of Dr. Surinder Behal, PW-1, the bones which were sent to him for examination were of a child aged between 3 to 5 years and the identity of the sex of the child could not be established from those bones. From the prosecution evidence

- A including the statement of PW-2, the age of Rozy was about 2 or 2-1/2 years. It cannot therefore, be said that the recovered bones have been connected positively to be those of Rozy. Moreover, according to PW-6 and PW-7, the child whose body was recovered from the canal had red/pink rubber bangles on its wrist but according to PW-2 when Rozy left home in the company of the appellant, she was wearing steel bangles. The
- B bangles which were recovered from the place of cremation alongwith the bones were also found to be steel bangles. Thus, it cannot be said with any amount of certainty that the bones which were taken into possession pursuant to the disclosure statement allegedly made by the appellant were that of Rozy at all. In this connection it also deserves to be noticed that
- C Sham Singh and Satpal before whom the disclosure statement, Ex. PE, was alleged to have been made by the appellant, as per the evidence of ASI Iqbal Singh PW were not examined at the trial. Even the witnesses to the recovery of the bones were withheld and not produced at the trial. These infirmities, create a doubt about the correctness of the prosecution case regarding the making of any disclosure statement by the appellant. This
- D circumstance also, therefore, has not been established by the prosecution.

From the above discussion it emerges that none of the four circumstances relied upon by the prosecution to connect the appellant with the crime have been established by the prosecution. On an independent appraisal of the evidence on the record, we have unhesitatingly come to the conclusion that the Trial Court was not justified in convicting and sentencing the appellant for the offence under Section 302/201 IPC. The finding of guilt recorded against the appellant by the Trial Court is not sustainable in law. From the very opening sentence of the judgment of the Trial Court which reads "Birth of a female child is still considered a curse in the Indian society. The present case is the worst type of example where father is alleged to have caused the murder of his two daughters who were aged between 5 to 7 years" it appears to us that the Trial Court got swayed by emotional considerations and allowed suspicion, surmises and conjectures to take the place of legal proof.

G This appeal is consequently allowed and the conviction and sentence of the appellant is hereby set aside. The appellant is on bail by virtue of an order of this Court dated 25.4.1989. His bail bonds shall stand discharged.

R.A.

Appeal allowed.