

KULWINDER SINGH

v.

STATE OF PUNJAB

DECEMBER 5, 2006

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

*Penal Code, 1860; s. 302*

*Murder—Accused persons hiring criminals to eliminate a relative—Criminals so hired shot him dead—Trial Court found all the accused persons except one guilty of committing murder and sentenced them to imprisonment for life—Appeal dismissed by High Court—On appeal, Held: Statements of PW3 disclosing names of hired criminals corroborated on material particulars by PW4, first informant—From recovery of pistols and empty cartridge from the spot, it could not definitely be ascertained that they were fired from the pistols so recovered and used by the criminals—But it would not lead to the conclusion that they had not committed the crime—Fight between accused and the deceased proved—Motive of accused to eliminate deceased could not be said to be wholly non-existent in the facts and circumstances of the case—Both the Courts below relied on the statement of PW7, an independent witness—No reasons found to differ with them—Accused Nos. 1 and 2 and hired criminals, accused Nos. 3 and 4 know each other—Hired criminals, accused-appellant and others visiting accused nos. 1 and 2 on several occasions and they must have undertaken to kill the deceased for greed of money—Payment of money to hired criminals by accused nos. 1 and 2 not necessary to be proved as it was within their special knowledge—Hence, impugned judgment does not suffer from any infirmity.*

*Evidence:*

*Extra-judicial confession—Evidentiary value—Discussed.*

**On the fateful day, when the informant and his father were returning back on foot to their village, two persons opened fire hitting his father on his back, who fell down. The informant raised an alarm and the accused fled away. The informant could not identify them immediately but in the FIR he claimed that he would be able to do so. In the First Information Report itself needle of**

- A suspicion was pointed towards accused nos. 1 and 2 and their father as they had land dispute with the deceased. The deceased was taken to hospital where he succumbed to the injuries. The statements of witnesses were recorded on the same day. They had named the assailants, the appellant being one of them. The deceased was said to have been adopted by one 'C'. The lands owned by 'C' had been partitioned, part of which was transferred to accused nos. 1 and 2, sons-in-law of 'C'. They bore grudge against the deceased. A quarrel took place among them. Allegedly, the deceased assaulted one of the accused as a result whereof his arm was fractured. According to PW-7, Accused nos. 1, 2 and 3 stated that they had hired accused-appellant No.1 and others to kill the deceased and murder of the deceased was committed by them. Accused persons came to the house of PW-7 and made a statement that owing to greed of money, they had murdered the deceased and they may be taken to the police. They were taken in custody. Recoveries were made pursuant to the information furnished by the appellant and the other. The country-made pistols so recovered were sent for examination before the Forensic Science Laboratory.
- D No definite opinion could be given regarding firing of the vital shot from the said weapons due to lack of sufficient individual characteristic obtaining marks therein. Relying on or on the basis of the evidences brought on record by the prosecution and post-mortem report, the trial Court convicted the appellant and other accused persons under Section 302 of the Indian Penal Code and Sections 25 and 27 of the Arms Act and sentenced them to suffer imprisonment for life, however, one of the accused was acquitted. Appeals thereagainst were preferred by convicted accused before the High Court. A criminal revision application was also filed by the informant against the order of acquittal of one of the accused. By reason of the impugned judgment, the Division Bench of the High Court dismissed both the appeals and revision petition. Hence the present appeal by one of the convicts.

Accused-appellant contended that having regard to the fact that the appellant was not named in the First Information Report, his participation in the commission of the offence is doubtful; that no money was proved to have passed hands; and that there was no reason as to why for a period of about 11 days, the appellant could not be arrested and, thus, the possibility of their having been falsely implicated cannot be ruled out.

Dismissing the appeal, the Court

H HELD:1.1.Though, the appellant and co-accused might not have been named by the first informant in the First Information Report, but what is clear

and explicit in his statement made therein, was that they were the persons who could be identified by the informant. The occurrence took place at 7.45 a.m. In the same night, the investigating officer PW-9 came to the spot and recorded the statement *inter alia* of PW-3. It is not in dispute that in his statement, he named the appellant and the co-accused as the persons who had fired on the deceased. Their names specifically found mention in the site plan prepared by the investigating officer on the same day. It is, therefore, not a case where the appellant and the co-accused could be falsely implicated.

[81-D, E]

1.2. Presence of PW-3 at the spot is not disputed as at his instance his jeep was brought to the place of occurrence wherein the deceased was taken to hospital. In his cross-examination, he had categorically stated that he had disclosed the names of the appellant and co-accused to the police when the investigating officer came to the spot and prepared the recovery memo. The first informant also might have recollected their names after sometime.

[81-G, H; 82-A]

1.3. The statements of PW-3 were corroborated in material particulars by the first informant PW-4. [82-B]

1.4. Certain minor discrepancies might be existing in the statements of prosecution witnesses in regard to the timing or the manner in which the occurrence had taken place but nothing much turns out of the same. [82-D]

2.1. Recovery of the pistols is not in question. Although in absence of any specific characteristic of the weapons having been fired, the fact as to whether the empty cartridges seized from the place of occurrence were fired from the respective weapons held by the appellant and the co-accused could not be definitely ascertained, but the same by itself would not lead to the conclusion that they had not committed the crime. [82-D, E]

2.2. The only suggestion given to PW-9 was that the names of all accused persons had been mentioned in the site plan only because it was prepared on 16.10.1997 and not on 15.10.1997 and by that time he had come to know the names of other accused also. It is, therefore, the defence case that at least by the next date the names of the accused who were not known to the investigating officer were mentioned in the site plan. It is, therefore, inconceivable that despite the same the Investigating Officer would not make any attempt to arrest them. His statement that he had made attempts to arrest but did not succeed, thus, cannot be disbelieved particularly in view of the fact that two of the accused persons were arrested on 24.10.1997. [82-G, H; 83-A]

**A** 3.1. Extra-judicial confession made by the accused before PW-7 must be judged having regard to the entire factual matrix. PW-7 was Vice-President of a Cooperative Society. The accused persons were known to him for about four years. The reason for making confession was that when the deceased had assaulted one of the accused as a result whereof his arm was fractured, his intervention was sought for. They had gone to him so that he can exercise his influence over the police. [83-B]

**B** 3.2. In his statements under Section 313 of the Code of Criminal Procedure, the appellant might have contended that he did not know the co-accused but the fact remains that he along with other accused persons were produced by PW-7. PW-9, the Investigating Officer also said so. He was not cross-examined on that part. Even otherwise nothing has been brought on record to show that they had not been arrested on 26.10.1997, when they having been produced by PW-7 before PW-9. [83-D]

**C** 3.3. PW-7 is an independent witness. He also stated about the fight between the deceased and accused No.1 as a result whereof the arm of the accused was fractured. Thus, the land dispute between the parties had been proved. Fight on an earlier occasion between them had also been proved. Motive of the accused to eliminate the deceased also cannot be said to be wholly non-existent. Both the Sessions Judge as also the High Court had relied on the statement of PW7. No reason is found to differ therewith. [83-F, G]

**D** 3.4. The evidentiary value of an extra-judicial confession must be judged in the fact situation obtaining in each case. It would depend not only on the nature of the circumstances but also the time when the confession had been made and the credibility of the witness who testifies thereto. [83-H]

**E** 4. Existence of dispute between the parties has not been questioned. It has been brought on record that the deceased was the brother's son of one 'C', the deceased was later adopted by 'C'. He was residing with her along with his children for a long time. She transferred some land in his favour. The documents evidencing the said transfer had been proved. Accused Nos. 1 and 2 who are her sons-in-law were, thus, bearing grudge against him. In the First Information Report they along with their father were named as suspects although they were not present at the place of occurrence. They knew the appellant and the co-accused, the hired criminals. The fact that one of them, the appellant had been seen visiting accused nos. 1 and 2 on some occasions is also not in much dispute. He must have undertaken to kill the deceased for

**F**

**G**

**H**

greed of money. Whether the money was paid by them to the appellant and co-accused was not necessary to be proved. It was within their special knowledge. For the reasons, the impugned judgment does not suffer from any infirmity.

[84-A, B, C, D]

CRIMINAL APPELLATE JURISDICTION : Civil Appeal No. 675 of 2006.

From the final Judgment and Order dated 27.2.2003 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. 310-DB/2001.

Yashank Adhyara, Mahima C. Shroff, Mukesh Kumar and Chirag M. Shroff for the Appellant.

Avneet Toor and Arun K. Sinha for the Respondent.

The Judgment of the Court was delivered by

**S.B. SINHA, J :** Appellant herein was arrayed as Accused No. 4 before the trial court. He along with one Baldev Singh was allegedly hired to kill Rajbir Singh (deceased) by Nirpal Singh, Nardev Singh and their father Pargat Singh.

A First Information Report was lodged by Harinder Singh son of the deceased. The incident occurred at about 7.45 a.m. on 15.10.1997 at village Behman Diwana. The family members of informant are agriculturists. The informant and his father had gone to their field situated at Niai Wala. They gave some instructions to their agricultural workers. When they were returning back on foot to their village, the deceased was walking 30/35 steps ahead of the informant. When his father reached near the Circular Road of the village, two persons covering their bodies with 'khes' were standing there. They raised exhortations to kill him. Hearing that, the deceased started running towards the street leading to the village. He was followed by both the said persons. They opened fire from their pistols which they had been holding in their respective hands. The shots fired from the pistols hit the deceased on his back. He fell down with his face downward in front of the house of one Budha Singh. The door was closed. The informant raised an alarm. Hearing it they fled away towards the Circular Road. Harinder Singh could not identify them immediately but in the FIR he claimed that he would be able to do so. In the First Information Report itself needle of suspicion was pointed out to Nirpal Singh, Nardev Singh and their father Pargat Singh as they had land dispute with the deceased. The deceased was taken to hospital.

A He breathed his last at the hospital.

The investigating officer came to the spot. He prepared a site plan. In the said plan, the veracity whereof is not in dispute, the place wherefrom the informant witnessed the occurrence was shown. It was marked as Point A in the site plan. Point B was also shown from where the appellant and Baldev Singh were said to be present. The incident was seen by Gurbux Singh (PW-3) and Gurmit Singh. Their statements were recorded on the same day near the place of occurrence. They had named the assailants, the appellant being one of them.

C Balbir Singh was a Vice-President of a Cooperative Society Behman Diwana. The parties in regard to their dispute had gone to him on an earlier occasion. A purported settlement was arrived at his instance.

D Accused Nos. 1 to 3, viz., Nirpal Singh, Nardev Singh and Pargat Singh went to him. Balbir Singh who was examined as PW-7 to make a confession to which we would advert to a little later. Accused Nos. 1, 2 and 3 were known to him. Nirpal Singh, Nardev Singh and Pargat Singh were sons-in-law of one Chand Kaur. The deceased was said to have been adopted by the said Chand Kaur. The lands of the said Chand Kaur had been partitioned. Some lands had been transferred to the deceased Rajbir Singh which made Nirpal Singh and Nardev Singh unhappy. A quarrel took place amongst them. E Allegedly, the deceased assaulted Nardev Singh as a result whereof his arm was fractured. They were thus bearing grudge against the deceased.

F According to PW-7, on 18.10.1997, Accused Nos. 1, 2 and 3 stated that they had hired Baldev Singh and Kulwinder Singh alia Kala to kill Rajbir Singh and they got him murdered. They had requested him to produce them before the police as the police was after them. They came to him as PW-7 was said to have some influence with the police authorities. He asked them to bring Baldev Singh and the appellant with them on the next day. On 19.10.1997, he went to the police station and made a statement there before the G Investigating officer.

H Appellant, the said Baldev Singh and Pargat Singh came to the house of PW-7 on 26.10.1997. They made a statement that owing to greed of money, they had murdered Rajbir Singh and they may be taken to the police. When they were going to the police station, they met the police party at the crossing of village Behman Diwana. They were taken in custody. The appellant on

being interrogated by Davinder Singh SI in presence of Ajaib Singh ASI disclosed that he had concealed by burying a .32 bore pistol in the pits near the bank of canal at a distance of 1 ½ furlong from the bridge of canal. He made an offer to get the same recovered. The statement to that effect was reduced into writing. His thumb impression was also obtained. Similarly, Baldev Singh on interrogation disclosed that he had kept concealed and buried a .12 bore pistol wrapped in a glazed paper at a distance of about 1 furlong from the bridge of the canal in the said area. His statement was recorded, reduced to writing and marked as Ex. PQ/1. It was also signed by him and attested by PW-7. Indisputably, recoveries were made pursuant to the informations furnished by the appellants and the said Baldev Singh. The said country-made pistols were sent for examination before the Forensic Science Laboratory, Punjab. No definite opinion could be given regarding firing of the vital shot from the said weapons due to lack of sufficient individual characteristic obtaining marks therein.

Rajbir Singh was examined by Dr. Shushil Gupta (PW-1). He found the following injuries on his person:

“(1) One wound of entry which is lacerated and 2 x 2 cm. circular in shape with inverted margin and it is situated on the right side of the back of chest and about 8th-9th rib area, 10 cm. medial to the vertebral column. Fresh blood from wound was present. On probing the wound that was going at lower side of abdomen. Injury kept for X-ray.

(2) Wound of entry which was lacerated and 2 x 1¼ cm circular in shape with inverted margins and situated on the right side of the back just on the vertebral column and on the survival throx (sic) region. Blood was present on the wound. Wound could not probe up. Injury kept for X-ray.”

Post mortem examination was conducted by Dr. U.S. Sooch (PW-2) on 16.10.1997 at 1.15 p.m. and he found the following injuries:

“(1) Lacerated wound ¾” x ½” with inverted Margins on the right interscapular area in its lower part near the vertebral column.

(2) Circular lacerated wound ¾ x ¾” with inverted margins just below the inferior angle of the right scapula. Surgical midline vertical wound on the front of the abdomen 6" long was present. Two Surgical drain wounds on each side of flanks of the abdomen and two surgical

A stiched drain wound on both sides of the chest with vene section wound on the left ankle and left elbow.”

Relying on or on the basis of the said evidences brought on record by the prosecution, the learned Additional Sessions Judge convicted the appellants, Baldev Singh, Nirpal Singh and Nardev Singh under Section 302 of the Indian Penal Code and Sections 25 and 27 of the Arms Act and sentenced them to suffer imprisonment for life. Pargat Singh, however, was acquitted.

Appeals thereagainst were preferred by all the four convicted accused before the High Court. A criminal revision application was also filed by Harinder Singh against the order of acquittal of Pargat Singh. By reason of the impugned judgment, the Division Bench of the Punjab and Haryana High Court dismissed both the appeals and revision.

Mr. Yashank Adhyaru, learned senior counsel appearing on behalf of the appellants, would submit that having regard to the fact that the appellants was not named in the First Information Report, his participation in the commission of the offence is doubtful. It was pointed that he was a resident of Jodhpur Pakhar village which was situated at a distance of 45 kms. from the place of occurrence and, thus, it was unlikely that he would undertake to commit a heinous offence, particularly, in view of the fact that no money was proved to have passed hands. Identification of the accused by PW-3, it was urged, is also doubtful. The statements made by the said witness as also the informant that they had known the appellants and the said Baldev Singh, the learned counsel contended, thus, were wholly unreliable; as had it been so they would have been named in the First Information Report and specific overt acts on their parts would have been mentioned therein. It was argued that there was no reason as to why for a period of about 11 days, the appellants could not be arrested and, thus, the possibility of their having been falsely implicated cannot be ruled out.

Our attention was also drawn to the statement of PW-3 wherein it was stated that 4-5 days after the incident he had gone to the police station and found the appellants to be in custody.

It was furthermore stated that extra-judicial confession purported to have been made by the accused before PW-7 appeared to be wholly unnatural particularly in view of the fact that if the appellants and the said Baldev Singh were hardened criminals they would not have gone to a person of another village for the purpose of making confession. Although, recovery of the

weapons might have been proved, keeping in view of the forensic evidence that the shots could not be proved to have been fired from the weapons, would not lead to an inference that the appellant committed the said crime. A

Ms. Avneet Toor, learned counsel appearing on behalf of the State, on the other hand, supported the judgment. B

Information about the incidence was received by PW-9 Davinder Singh through a wireless message regarding admission of the deceased in the Civil Hospital, Bhatinda. He went to the hospital and recorded the statement of the informant. He on the same day itself went to the place of occurrence. He recorded the statement of Gurmit Singh. He also prepared the rough sketch map. He found a .12 bore cartridge at the spot as also an empty cartridge of .32 bore. He also recorded the statement of Gurbux Singh at the spot as also Jaskaran Singh, Mohinder Singh and other witnesses. C

The appellant and the said Baldev Singh might not have been named by the first informant in his First Information Report, but what, however, is clear and explicit in his statement made therein, was that they were the persons who could be identified by the informant. The occurrence took place at 7.45 a.m. In the same night, the investigating officer PW-9 came to the spot and recorded the statement *inter alia* of PW-3 Gurbux Singh. It is not in dispute that in his statement, he named the appellant and the said Baldev Singh as the persons who had fired on the deceased. Their names specifically found mention in the site plan prepared by the investigating officer on the same day. It is, therefore, not a case where the appellant and the said Baldev Singh could be falsely implicated. Appellant may be a resident of village Jodhpur Pakhar, but from the statements made by Gurbux Singh, in his cross-examination, it appears that before the lands were allotted by Chand Kaur to them, Nirpal Singh and others had been residing in the said village. All the accused, thus, used to reside at village Jodhpur Pakhar. They were, therefore, known to each other. The appellant and Baldev Singh had been seen visiting the house of Nirpal Singh and Nardev Singh many times. D E F

Presence of PW-3 at the spot is not disputed as at his instance his jeep was brought to the place of occurrence wherein the deceased was taken to hospital. G

In his cross-examination, he had categorically stated that he had disclosed the names of the appellant and Baldev Singh to the police when the investigating officer came to the spot and prepared the recovery memo. H

A The first informant also might have recollected their names after some time.

It is furthermore not correct as was contended by Mr. Adhyaru that the police did not take any sep to arrest the appellant from 15.10.1997 to 26.10.1997. PW-9 in his deposition categorically stated that he had made efforts to arrest the accused but were not successful in doing so. Nirpal Singh and Nardev

B Singh were arrested on 24.10.1997 when they were going from village Bir Behman to Behman Diwana. Other accused persons including the appellant were produced by Balbir Singh PW-7. The statemnts of PW-3 Gurbax Singh were corroborated in material particulars by the first informant PW-4 Harinder Singh.

C The site plan prepared by the investigating officer also clearly showed the place where Gurbax Singh and Gurmit Singh were standing. The place of occurrence was intervened only by a vacant piece of land.

D Certain minor discrepancies might be existing in their statements in regard to the timing or the manner in which the occurrence had taken place but nothing much turns out of the same.

E Recovery of the pistols is not in question. Although in absence of any specific characteristic of the said weapons having been fired, the fact as to whether the empty cartridges seized from the place of occurrence were fired from the respective weapons held by the appellant and the said Baldev Singh could not be definitely ascertained, but the same by itself would not lead to the conclusion that they had not committed the crime. We may furthermore notice that no suggestion had also been put by the accused persons to PW-9 that the names of the appellant was not disclosed to him.

F We may also notice that the appellant and the said Baldev Singh refused to participate the in test identification parade. They, according to PW-9, were asked to muffle their faces but they did not do it.

G It is interesting to note that the only suggestion given to PW-9 was that the names of all accused persons had been mentioned in the site plan only because it was prepared on 16.10.1997 and not on 15.10.1997 and by that time he had come to know the names of other accused also. It is, therefore, the defence case that at least by the next date the names of the accused who were not known to the investigating officer were mentioned in the site plan. It is, therefore, inconceivable that despite the same he would not make any attempt

H to arrest them. His statement, as noticed hereinbefore, that he had made

attempts to arrest but did not succeed, thus, cannot be disbelieved particularly in view of the fact that two of the accused persons were arrested on 24.10.1997. A

Extra-judicial confession made by the accused before PW-7 must be judged having regard to the entire factual matrix. He was Vice-President of a Cooperative Society. The accused persons were known to him for about four years. The reason for making confession was that when Rajbir Singh had assaulted Nardev Singh as a result whereof his arm was fractured, his intervention was sought for. They had gone to him so that he can exercise his influence over the police. As he asked them to produce the appellant and the said Baldev Singh, they must have been persuaded by the other accused persons to go to him for similar purpose particularly when two of the accused persons, viz., Nirpal Singh and Nardev Singh had already been arrested by that time. All the accused by that time came to know that their involvement in the crime is known to the investigating officer. B C

In his statements under Section 313 of the Code of Criminal Procedure, the appellant might have contended that he did not know Baldev Singh but the fact remains that he, Baldev Singh and Pargat Singh were produced by PW-7. PW-9 also said so. He was not cross-examined on that part. Even otherwise nothing has been brought on record to show that they had not been arrested on 26.10.1997 having been produced by PW-7 before PW-9. PW-7 categorically stated that the deceased Rajbir Singh although was known to him but they were not friends. He, therefore, had no personal interest in the matter. He was a witness to the recovery of the weapons also. D E

PW-7 is an independent witness. He also stated about the fight between the deceased and Nardev Singh as a result whereof the arm of Nardev Singh was fractured. Thus, the land dispute between the parties had been proved. Fight on an earlier occasion between them had also been proved. F

Motive of the accused to eliminate Rajbir Singh also cannot be said to be wholly non-existent.

Both the learned Sessions Judge as also the High Court had relied on the statement of PW7. We do not find any reason why to differ therewith. G

The evidentiary value of an extra-judicial confession must be judged in the fact situation obtaining in each case. It would depend not only on the nature of the circumstances but also the time when the confession had been made and the credibility of the witness who testifies thereto. H

- A** Existence of dispute between the parties has not been questioned. It has been brought on record that Rajbir Singh was the brother's son of Chand Kaur. He was adopted by her. He was residing with her along with his children for a long time. She transferred some land in his favour. The documents evidencing the said transfer being Ex. PU and Ex. PV had been proved. Nirpal Singh and Nardev Singh who are her sons-in-law were, thus,
- B** bearing grudge against him. In the First Information Report they and their father were named as suspects although they were not present at the place of occurrence. They knew the appellant and the said Baldev Singh. He although belonged to a distant village but other accused had also been resident of the same village. The fact that he had been seen visiting Nirpal
- C** Singh and Nardev Singh on some occasions is also not in much dispute. He must have undertaken to kill the deceased for greed of money.

Whether the money was paid by them to the appellant and Baldev Singh was not necessary to be proved. It was within their special knowledge.

- D** For the reasons aforementioned, we are of the opinion that the impugned judgment does not suffer from any infirmity. The appeal is accordingly dismissed.

S.K.S.

Appeal dismissed.