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SUCHA SINGH

v.

STATE OF HARYANA

(Criminal Appeal No. 1190 of 2007)

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JUNE 20, 2013

[A.K. PATNAIK AND GYAN SUDHA MISRA, JJ.]

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Penal Code, 1860 - ss. 302 & 394 - Conviction under, of the appellant - Propriety - Held: On facts, proper - Evidence of PW-1, PW-2, PW-3, PW-8 and PW-11 sufficient to unfold the prosecution story and prove beyond reasonable doubt that appellant had killed the deceased and committed theft of his mule cart - Appellant made extra-judicial confession to PW-8 - Motive of the appellant was to take possession of the mule cart and sell the same and make money - Recoveries of articles pursuant to the disclosure statement made by the appellant clearly point to the guilt of the appellant.

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Evidence - Witness - Appreciation of - Held: All witnesses of the prosecution need not be called - But witnesses essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution.

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Evidence - Confession - Extra-judicial confession - Admissibility of.

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PW1 found the dead body of PW2's son lying in a pit in the road side. The dead body had multiple injuries. The trial court held that there was no eye-witness to the incident in which the deceased was killed, but the chain of circumstances established by the prosecution proved beyond reasonable doubt that the appellant killed the deceased and stole his mule cart. These circumstances were that the appellant had hired the mule cart of the deceased and the deceased left for the house of the

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appellant as deposed by PW-2. Further, the appellant made extra-judicial confession to PW-8 that he had killed the deceased. He also made a statement before the police pursuant to which the weapon of offence (Kassi Ex.P-22) and other articles (Exts.P-23 and P-24) were recovered. The Kassi (Ex.P-22), bed-sheet (Ex.P-23) and Khes (Ex.P-24) were found to be stained with human blood of the same group of blood, which was detected on the clothes of the deceased (Shirt, Ex.P-2, Jersey, Ex.P-4 and Underwear Ex.P-5) worn by him at the time of the occurrence. On the basis of the aforesaid circumstantial evidence, the trial court convicted the appellant under Sections 302 and 394 IPC, holding that the case of the prosecution was a full-proof case, and sentenced him to undergo rigorous imprisonment for life. The conviction and sentence was upheld by the High Court, and therefore the instant appeal.

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In the instant appeal, contentions were raised on behalf of the appellant: 1) that the prosecution did not examine all the witnesses cited in the charge-sheet; 2) that the extra-judicial confession alleged to have been made by the appellant to PW-8 ought not to have been believed; 3) that the disclosure statement made by the appellant to the police was under pressure from the police and there were no independent witnesses to the recovery made pursuant to the statement; 4) that the FIR was not proved through the policeman who received the FIR; 5) and that the motive of the appellant to kill the deceased was not established by the prosecution.

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Dismissing the appeal, the Court

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HELD: 1.1. All the witnesses of the prosecution need not be called but witnesses who were essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution whether the

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A effect of their testimony is for or against the case for the
prosecution and failure to examine such a witness might
affect a fair trial. However, whether an examination of a
particular witness was essential to the unfolding of the
prosecution story will depend upon the facts and
B circumstances of each case. [Para 6] [568-A-C]

1.2. In the facts of the present case, the witnesses
who are essential for unfolding the prosecution case
against the appellant have been examined. The evidence
C of PW-1, PW-2, PW-3, PW-8 and PW-11 are sufficient to
unfold the prosecution story against the appellant and
prove beyond reasonable doubt that it is the appellant
who had killed the deceased and committed theft of his
mule cart. On the facts of this case, it is difficult to hold
D that non-examination of other witnesses cited by the
prosecution in the charge-sheet adversely affects the
prosecution case or in any way was unfair to the accused.
[Para 7] [568-D; 569-G-H; 570-A]

Tej Parkash v. State of Haryana (1996) 7 SCC 322 -
E relied on.

Stephen Seneviratne v. The King AIR 1936 PC 289 -
referred to.

2. A confession is a direct piece of evidence but
F before such evidence can be accepted, it must be
established by cogent evidence what were the exact
words used by the accused and even if the confession
was established, prudence and justice demand that such
evidence should not be used as the sole ground of
G conviction and it may be used as a corroborative piece
of evidence. In the instant case, PW-8 has stated that on
05.02.1997, the appellant came to his residence and told
him that with a bad intention he had murdered the
deceased and he had brought the mule cart to village
H Kamalpur. This was a clear confession made by the

appellant to PW-8. That apart, this extra-judicial confession only corroborates the other circumstances which establish the guilt of the appellant beyond reasonable doubt. [Para 8] [570-B-D] A

Sahoo v. State of Uttar Pradesh AIR 1966 SC 40: 1965 SCR 86 - relied on. B

3. Pursuant to the information furnished by the appellant the Kassi, Khes and Bed-sheet were recovered from the pit under the road pulia. The recovery has also been witnessed by PW-3, who has clearly stated in his evidence that the accused got recovered Kassi, one Khes and a bed-sheet. These articles which were recovered were sent to the Forensic Science Laboratory and the results of the Forensic Science Laboratory are that the Kassi, Bed-sheet and Khes were stained with large and small blood stains. These recoveries of the aforesaid articles pursuant to the disclosure statement made by the appellant clearly point to the guilt of the appellant. [Para 10] [571-C-D] C D

State of Uttar Pradesh v. Deoman Upadhyaya AIR 1960 SC 1125 - relied on. E

4. PW-1, the informant, has been examined and he has stated that he lodged the FIR on 01.02.1997 and PW-11 has stated that on the basis of the information furnished by PW-1 he registered the FIR which was written by HC Ranbir Singh. Hence, the FIR (Ex.PE/2) has been duly proved. Further, from the extra judicial confession made by the appellant to PW-8, it is clear that the motive of the appellant was to take possession of the mule cart and sell the same and make money. [Paras 11, 12] [571-F, G; 572-A] F G

5. In the result, no infirmity is found in the judgment of the trial court and the High Court. [Para 13] [572-B] H

A Case Law Reference:

(1996) 7 SCC 322 relied on Para 6

AIR 1936 PC 289 referred to Para 6

B 1965 SCR 86 relied on Para 8

AIR 1960 SC 1125 relied on Para 9

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1190 of 2007.

C From the Judgment and Order dated 06.04.2006 of the
High Court of Punjab & Haryana at Chandigarh CRLA No. 294
of 2003.

Dr. Sushil Balwada (A.C.) for the Appellant.

D Rajeev Gaur Naseem, Kamal Mohan Gupta for the
Respondent.

The Judgment of the Court was delivered by

E **A.K. PATNAIK, J.** 1. This is an appeal against the
judgment dated 06.04.2006 of the Division Bench of the Punjab
and Haryana High Court in Criminal Appeal No.294-DB of
2003.

F 2. The facts very briefly are that Amrik Singh, son of Fakir
Singh, resident of Azad Nagar, Patiala (Punjab), used to ply a
mule cart. On 31.01.1997, the appellant contacted him and
hired his mule cart for Rs.600/- for carrying his household
luggage from village Kamalpur, Police Station Rajound, to
G village Chambo Kheri, District Patiala. Accordingly, Amrik
Singh left for the village Kamalpur on 31.01.1997 and was to
return on the night of the same day, but did not return. His family
members waited till the morning of 01.02.1997 but when Amrik
Singh did not return, they became apprehensive and Fakir
H Singh went to the house of the appellant and met his wife who

assured him that his son will return back by evening. When Amrik Singh did not return in the evening of 01.02.1997, Fakir Singh, Kaka Singh and Hardev Singh visited the house of the appellant and again they were assured by the wife of the appellant that Amrik Singh will return soon. In the meanwhile, on 01.02.1997 at about 11.30 am, one Rajinder Kumar noticed the dead body of a young man lying in a pit in the road side near village Kichhana and informed the police of Police Station, Rajound, and FIR was registered in Police Station, Rajound, under Section 302 of the Indian Penal Code (for short 'IPC'), and when inquest proceedings were carried out on the dead body, a purse and a slip were recovered from the dead body and from the slip the police was able to trace the family of Amrik Singh and informed Fakir Singh who reached the Civil Hospital, Kaithal, and identified the dead body to be that of his son Amrik Singh (hereinafter referred to as "the deceased"). Investigation was carried out and a charge-sheet was filed under Sections 302 and 394, IPC, against the appellant.

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3. As the appellant pleaded not guilty, he was tried. At the trial, the prosecution examined as many as 11 witnesses. The trial court found that there was no eye-witness to the incident in which the deceased was killed, but the chain of circumstances established by the prosecution proved beyond reasonable doubt that the appellant killed the deceased and stole his mule cart. These circumstances were that the appellant hired the mule cart of the deceased and the deceased left for the house of the appellant as has been deposed by Fakir Singh (PW-2). The appellant made an extra-judicial confession to Sher Singh (PW-8) who accompanied the appellant along with the mule cart that he had killed the deceased and the mule cart was produced before the police by Sher Singh (PW-8) as per recovery memo (Ex.PF). The appellant made a statement before the police pursuant to which the weapon of offence (*Kassi* Ex.P-22) and other articles (Exts.P-23 and P-24) were recovered. As per the reports of the Forensic Science Laboratory, Haryana, Ex.PH and Ex.PH/1, the *Kassi* (Ex.P-22),

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A bed-sheet (Ex.P-23) and *Khes* (Ex.P-24) were found to be stained with human blood of the same group of blood, which was detected on the clothes of the deceased (Shirt, Ex.P-2, Jersey, Ex.P-4 and Underwear Ex.P-5) worn by him at the time of the occurrence. On the basis of the aforesaid circumstantial evidence, the trial court convicted the appellant under Sections 302 and 394 IPC, saying that the case of the prosecution was a full-proof case, and sentenced him to undergo rigorous imprisonment for life and fine of Rs.2000/- for the offence under Section 302 IPC and for a period of 7 years rigorous imprisonment and fine of Rs.1000/- for the offence under Section 394 IPC. The trial court further ordered that the sentences were to run concurrently. Aggrieved, the appellant filed the Criminal Appeal No. 294-DB of 2003 in the High Court, but by the impugned judgment the High Court dismissed the appeal and maintained the conviction and sentences against the appellant.

4. Learned counsel for the appellant submitted that there was no eye witness to the occurrence and the conviction of the appellant was solely based on circumstantial evidence. He submitted that the trial court was not right in convicting the appellant for the following reasons:

- (i) Though the prosecution cited many witnesses in the charge-sheet, it examined only 11 witnesses.
- (ii) The extra-judicial confession alleged to have been made by the appellant to Sher Singh (PW-8) ought not to have been believed.
- (iii) The statement of the appellant to the police on the basis of which disclosure was made, was made under pressure from the police and there were no independent witnesses to the recoveries made pursuant to the statement.

(iv) The FIR has not been proved through the policeman who has received the FIR, namely, Ranbir Singh.

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(v) The motive of the appellant to kill the deceased has not been established by the prosecution.

Learned counsel for the appellant submitted that this is, therefore, a fit case in which the appellant should be acquitted of the charges.

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5. Learned counsel for the State, on the other hand, submitted in his reply that:

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(i) It was not necessary for the prosecution to examine all the witnesses cited in the charge-sheet if the 11 witnesses who have been examined were sufficient to prove the case of the prosecution against the appellant beyond reasonable doubt.

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(ii) The circumstantial evidence in this case including the medical evidence of PW-6 and the Forensic Science Laboratory Report were sufficient to establish that it is the appellant and the appellant alone who had committed the offences.

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(iii) The FIR had been proved by the prosecution by examining the informant, Rajinder Kumar (PW-1) and, therefore, it was not necessary to examine the policeman Ranbir Singh.

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(iv) The extra-judicial confession was corroborated by other circumstantial evidence and therefore was rightly believed by the trial court.

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(v) Where the circumstantial evidence established the guilt of the accused beyond reasonable doubt, the Court cannot refuse to convict only on the ground that the motive of the accused is not proved.

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A 6. We may first deal with the contentions on behalf of the
appellant that the prosecution has not examined all the
witnesses cited in the charge-sheet. This Court has held in *Tej*
Parkash v. State of Haryana [(1996) 7 SCC 322] relying on
B the Privy Council's decision in *Stephen Seneviratne v. The*
King (AIR 1936 PC 289) that all the witnesses of the
prosecution need not be called but witnesses who were
essential to the unfolding of the narrative on which the
prosecution is based must be called by the prosecution whether
C the effect of their testimony is for or against the case for the
prosecution and that failure to examine such a witness might
affect a fair trial. However, whether an examination of a
particular witness was essential to the unfolding of the
prosecution story will depend upon the facts and circumstances
of each case.

D 7. In the facts of the present case, we find that the
witnesses who are essential for unfolding the prosecution case
against the appellant have been examined. PW-1, Rajinder
Kumar, is the informant who has stated that he noticed the dead
E body of a young man aged 26-27 years lying in a pit in the road
side and the dead body had multiple injuries and he proceeded
towards Police Station, Rajound and on the way, he noticed a
police jeep and he stopped the jeep and gave his statement
to ASI Balwan Singh. PW-2, Fakir Singh, is the father of the
F deceased and his evidence is that on 31.01.1997, the appellant
whom he knew earlier hired the mule cart for bringing household
articles from village Kamalpur and the deceased accordingly
went on the mule cart with the appellant and all this happened
in his presence. He has further stated that the deceased did
not come back on the evening of 31.01.1997 and on the
G morning of 01.02.1997, and on 01.02.1997 between 5.00 p.m.
and 6.00 p.m., an ASI along with a constable came to him and
showed him the documents which were recovered from the
dead body and asked him whether the documents belonged
to his son and he replied in the affirmative. He has further stated

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that he went to the Civil Hospital, Kaithal, and identified the dead body to be that of his son. PW-3, Kaka Singh, corroborated the statement of PW-2. PW-8 has deposed that on 05.02.1997, the appellant told him that he had murdered the deceased with a bad intention and he brought the mule cart to village Kamalpur and he had tried to sell the same. PW-8 has further deposed that the appellant requested him to produce him before the police with a view to avoid third degree method of interrogation by the police and on 06.02.1997, he produced him before the police. PW-11 (Balwan Singh), the Investigating Officer, has stated that on 01.02.1997, he recorded the statement of PW-1 (Ex.PE) and he registered the formal FIR (Ex.PE/2) which was recorded by HC Ranbir Singh. He has further deposed that he prepared the inquest report (Ex.PK) of the dead body of the deceased and during the inquest proceedings recovered the purse (Ex.P-25) along with the identity slip (Ex.P-26) and sent an application (Ex.PJ) for *post-mortem* of the dead body at the Civil Hospital, Kaithal. He has also deposed that on 06.02.1997, the appellant accompanied by PW-8 came from the side of village Kithana and was produced before him along with the mule cart by PW-8. He has further stated that on the number plate of the mule cart the name of the deceased was written with white paint in Punjabi language. He has further stated that on 07.02.1997, the appellant was interrogated and he made a disclosure statement (Ex.PG) and pursuant to the said disclosure statement (Ex.PG), the *Khes* (Ex.P-24), Bed-sheet (Ex.P-23) and *Kassi* (Ex.P-22) were recovered after digging the pit in which these articles were lying concealed. In our considered opinion, the evidence of PW-1, PW-2, PW-3, PW-8 and PW-11 are sufficient to unfold the prosecution story against the appellant and prove beyond reasonable doubt that it is the appellant who had killed the deceased and committed theft of his mule cart and on the facts of this case, it is difficult to hold that non-examination of other witnesses cited by the prosecution in the charge-sheet adversely affects the prosecution case or in any way was unfair

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A to the accused.

B 8. There is also no merit in the contention of the learned
 C counsel for the appellant that the extra-judicial confession
 D alleged to have been made by the appellant to PW-8 ought not
 to have been believed. In *Sahoo v. State of Uttar Pradesh* (AIR
 1966 SC 40), this Court has held that a confession is a direct
 piece of evidence but before such evidence can be accepted,
 it must be established by cogent evidence what were the exact
 words used by the accused and even if the confession was
 established, prudence and justice demand that such evidence
 should not be used as the sole ground of conviction and it may
 be used as a corroborative piece of evidence. As we have
 already noticed, PW-8 has stated that on 05.02.1997, the
 appellant came to his residence and told him that with a bad
 intention he had murdered the deceased and he had brought
 the mule cart to village Kamalpur. This was a clear confession
 made by the appellant to PW-8. That apart, this extra-judicial
 confession only corroborates the other circumstances which
 establish the guilt of the appellant beyond reasonable doubt.

E 9. We may next consider the submission of learned
 F counsel for the appellant that the disclosure statement made
 by the appellant to the police was under pressure from the
 police and there were no independent witnesses to the recovery
 made pursuant to the statement. In *State of Uttar Pradesh v.*
Deoman Upadhyaya (AIR 1960 SC 1125), a five judge bench
 of this Court has held:

G "Section 27 is founded on the principle that even though
 the evidence relating to confessional or other statements
 made by a person, whilst he is in the custody of a police
 officer, is tainted and therefore inadmissible, if the truth of
 the information given by him is assured by the discovery
 of a fact, it may be presumed to be untainted and is
 therefore declared provable in so far as it distinctly relates

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to the fact thereby discovered.”

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The argument of the learned counsel for the appellant that the statement of the appellant to the police on the basis of which disclosure was made was under pressure from the police is thus misconceived if the truth of the statement was established through recoveries made pursuant to the statement.

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10. In the instant case, pursuant to the information furnished by the appellant the *Kassi*, *Khes* and Bed-sheet were recovered from the pit under the road *pulia*. The recovery has also been witnessed by PW-3, Kaka Singh, who has clearly stated in his evidence that the accused got recovered *Kassi*, one *Khes* and a bed-sheet. These articles which were recovered were sent to the Forensic Science Laboratory and the results of the Forensic Science Laboratory are that the *Kassi*, Bed-sheet and *Khes* were stained with large and small blood stains. These recoveries of the aforesaid articles pursuant to the disclosure statement made by the appellant clearly point to the guilt of the appellant and there is no merit in the contention of learned counsel for the appellant that the statement of the appellant and the recoveries made pursuant to the statement of the appellant are of no evidentiary value.

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11. We also do not find any merit in the argument of the learned counsel for the appellant that the FIR has not been proved through HC Ranbir Singh, the policeman who received the FIR. We find that PW-1, the informant, has been examined and he has stated that he lodged the FIR on 01.02.1997 and PW-11 has stated that on the basis of the information furnished by PW-1 he registered the FIR which was written by HC Ranbir Singh. Hence, the FIR (Ex.PE/2) has been duly proved.

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12. We also find that the contention of the learned counsel for the appellant that the motive of the appellant to kill the deceased has not been established by the prosecution is misconceived in facts. From the extra judicial confession made

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A by the appellant to PW-8, it is clear that the motive of the appellant was to take possession of the mule cart and sell the same and make money.

B 13. In the result, we do not find any infirmity in the judgment of the trial court and the High Court and we accordingly dismiss this appeal.

B.B.B.

Appeal Dismissed.