

goods have not moved in the ordinary course from the factory to the Head Office at Delhi. The applicant/dealer had also admitted that apart from the goods which have been sold in the above transactions, they had no stock. So, these circumstances clearly establish that the movement of the goods had taken place from the factory at Bahadurgarh in Haryana to the Head Office at Delhi as an incidence of contract of sale already entered into by the dealer at the Head Office. It is the contract of sale which had occasioned the movement of the goods.

(8) In fairness to Mr. S. P. Jain, learned counsel for the applicant/dealer, it may be mentioned that he had brought to our notice two decisions of the final Court in *Kelvinator of India Ltd. v. State of Haryana*, (1) and *Union of India v. K. G. Khosla and Co. Ltd.* (2)., these decisions do not help the learned counsel, because in both cases there were contracts of sale which fell for interpretation and on the construction of those documents were based the two decisions. However, in the present case, there is no document which falls for construction.

(9) In the result, we answer the first question in the affirmative and in favour of the Department.

(10) Regarding the second question, it is apparent from the record that no 'C' forms were produced before the Sales-tax authorities in Haryana. Only orders of the Sales-tax authorities of Union Territory of Delhi were produced. In the absence of 'C' forms, the Haryana Sales-tax authorities were justified in not levying tax at the concessional rate. In the absence of any evidence in the form of 'C' forms that the sales had been made to registered dealers, we hold that the sales effected by the applicant/dealer were liable to be taxed at the rate of 10 per cent and not 3 per cent. Thus, our answer to question No. 2 also goes against the applicant and in favour of the Department.

**R.N.R.**

Before : G. C. Mital & S. S. Sodhi, JJ.  
AMARJIT KAUR,—Appellant.  
*versus*

THE STATE OF PUNJAB,—Respondent.  
Criminal Appeal No. 518-DB of 1987.  
7th September, 1989

*Indian Penal Code, Ss. 302, 34—Dead Bodies found lying buried in field—No eye witness—Conviction based on Circumstantial evidence—Recovery of bodies on the basis of Extra Judicial Statement—Extra Judicial confession must meet the test of creditability.*

- (1) (1973) 32 STC 629.  
(2) (1979) 43 STC 457.

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*Held*, that an extra-judicial confession is usually looked upon as a weak type of evidence and therefore, whenever it is sought to be relied upon, the burden lies upon the prosecution to show its trustworthiness. In order to render such confession worthy of belief, regard must be had to:—

- (i) the person to whom it was made ;
- (ii) the connection, if any, of the accused with him ;
- (iii) the occasion or reason for the accused to go and make such a confession to him ; and
- (iv) the circumstances in which it was made.

Besides all this, the extra-judicial confession must be considered in the over-all context of the prosecution case and the evidence on record.

(Para 12).

*Held*, that in the matter of extra-judicial confessions, there appears to be a growing tendency on the part of the investigating agencies to introduce such confessions and of the nature and quality as in the present case, tending inevitably to create thereby the unfortunate impression of such evidence having perhaps been falsely concocted to bolster up an otherwise unsustainable charge. Such a practice is indeed to be deprecated. We must, however, hasten to add that this is not to be understood as implying that an extra-judicial confession is not or cannot be used as a valuable piece of evidence. It is rather to emphasise that when evidence of an extra-judicial confession is sought to be used, the investigating agencies must ensure that it meets the test of credibility.

(Para 18).

*Appeal from the order of Sardar Amarbir Singh Gill, Sessions Judge, Ropar dated 15th July, 1987, convicting and sentencing the appellant.*

**CHARGES AND SENTENCES :** *To undergo imprisonment for life and to pay a fine of Rs. 500 or in default to undergo RI for 6 months, u/s 302/34 IPC for the murder of Santokh Singh.*

*To undergo imprisonment for life and to pay a fine of Rs. 500 or in default to undergo further RI for 6 months u/s 302/34 IPC, for the murder of Sukhdev Singh. Both the sentences to run concurrently.*

R. S. Ghai, Sr. Advocate, for the Appellants.

P. S. Kang, Advocate, for A.G. Punjab.

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**JUDGMENT**

*S. S. Sodhi, J.*

(1) The matter here concerns the murder of two brothers-Santokh Singh and Sukhdev Singh, whose dead bodies were found lying buried in the field near their house in village Phassee in district Ropar.

(2) It is the case of the prosecution that Santokh Singh and Sukhdev Singh were murdered by Amarjit Kaur, the wife of Santokh Singh and her paramour-Harneek Singh and that the crime was committed sometime between the night of August 15 and 16, 1986.

(3) Circumstantial evidence is what the case of the prosecution rests upon, there being no eye-witness to the commission of the crime. The circumstances sought to be relied upon being the illicit relations between Amarjit Kaur and Harneek Singh; their unnatural conduct and demeanour when enquiry was made from them regarding Santokh Singh and Sukhdev Singh deceased; a quarrel between Santokh Singh and Sukhdev Singh deceased with Harneek Singh on August 15, 1986, the extra-judicial confession said to have been made by Harneek Singh to Gurdev Singh and the disclosure statement of Harneek Singh leading to the recovery of the dead bodies of the two deceased.

(4) The evidence regarding the illicit relations of Amarjit Kaur with Harneek Singh, is provided by the testimony of P.W. 7 Zora Singh, the cousin of Santokh Singh and Sukhdev Singh deceased and P.W. 8 Amar Nath, Sarpanch of village Phassee. It was the statement of both these witnesses that Santokh Singh and Sukhdev Singh had shifted to village Phassee about a year-and-half earlier when they purchased some land there. Harneek Singh used to visit the house of Santokh Singh and Sukhdev Singh and this used to annoy them as he had developed illicit relations with Amarjit Kaur.

(5) As regards the occurrence of August 15, 1986, P.W. 8 Amar Nath, Sarpanch deposed that he happened to be passing by the side of the house of Santokh Singh and Sukhdev Singh when he saw them and Harneek Singh sitting there under the influence of liquor and quarreling with each other. Amarjit Kaur was also present nearby. When he asked them why they were quarreling, Santokh

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Singh deceased replied that Harnek Singh had illicit relations with his wife which was bringing a bad name to the family. Amar Nath stated that he pacified them and then went home.

(6) The next part of the prosecution case concerns the suspicion said to have been aroused in the mind of P.W. 7—Zora Singh when he happened to go to the house of Santokh Singh and Sukhdev Singh on August 25, 1986. He deposed that he found Amarjit Kaur and Harnek Singh there and when he enquired about Santokh Singh and Sukhdev Singh, she told him that they had gone to village Panjeeta to meet him. This, he stated made him suspicious and he thereupon went to P.W. 8—Amar Nath Sarpanch and expressed his suspicions to him whereupon, he, Amar Nath as also Bahadur Singh and Joginder Singh who happened to be there, also accompanied him back to the house of the deceased and they all then joined in enquiring about Santokh Singh and Sukhdev Singh, but again Amarjit Kaur and Harnek Singh could give them no satisfactory reply regarding their whereabouts. It was then that he along with Amar Nath Sarpanch and others went to the police station where he made his statement exhibit PD on the basis of which the present case came to be registered.

(7) Next, there is the extra-judicial confession said to have been made by Harnek Singh to Gurdev Singh, a liquor contractor of village Hafsabad on August 26, 1986. P.W. 6—Gurdev Singh deposed, in this behalf, that he was at his liquor vend in village Bahrampur when Harnek Singh came to him and told him that he had committed a sin by murdering Santokh Singh and Sukhdev Singh and he asked him to produce him before the police. According to Gurdev Singh, leaving Harnek Singh at the liquor vend, he went to village Phassee where he met Sub-Inspector Maghar Singh and told him that Harnek Singh was at his liquor vend. He then came back to his liquor vend and produced Harnek Singh before Inspector Maghar Singh at village Phassee who then arrested him.

(8) The other piece of evidence to connect Amarjit Kaur and Harnek Singh with the commission of the offence charged is the recovery of the dead bodies of the two deceased consequent upon a disclosure statement made by Harnek Singh during interrogation by the Investigating officer Inspector Maghar Singh. It was the testimony of P.W. 10—Inspector Maghar Singh that soon after his arrest, he interrogated Harnek Singh who made the disclosure statement exhibit PM and in pursuance thereof, he got recovered

the dead bodies of Santokh Singh and Sukhdev Singh lying buried in the field about 10 *karams* from their house. The disclosure statement and the recovery of the dead bodies is also corroborated by the testimony of P.W. 6—Gurdev Singh and P.W. 8—Amar Nath Sarpanch.

(9) The medical evidence led by the prosecution consists of the testimony of P.W. 1—Dr. Anil Gupta, who conducted the post mortem examination on the dead bodies of the two deceased on August 27, 1986. In the opinion of the doctor, both the deceased had been strangled to death and the probable time that elapsed between death and post mortem was more than a week.

(10) When examined under Section 313 of the Code of Criminal Procedure, 1973, both Amarjit Kaur and Harnek Singh denied the prosecution case. According to Amarjit Kaur, she did not know anything of the murders and had in fact tried to locate Santokh Singh and Sukhdev Singh and had, for this purpose, also approached the police. It was alleged by her that Inspector Maghar Singh had taken Rs. 13,000 from her house on the assurance that he would entertain her complaint in this behalf. As regards Zora Singh, it was her plea that he had deposed falsely as he used to help brother-in-law Jasmer Singh who wanted to take away the share of land of Sukhdev Singh deceased who was a bachelor, while Amar Nath Sarpanch, it was said, wanted to grab the 25 acres of land which they had purchased on the basis of possession when they shifted to village Phassee. Harnek Singh, on his part, sought to attribute his false involvement in this case to his being an employee of the Punjab State Electricity Board and the discontinuance of electric connections of land-owners who did not pay their electricity bills.

No evidence was, however, led in defence.

(11) It will be seen that the main stay of the prosecution is the illicit relations between Amarjit Kaur and Harnek Singh. The only evidence here consists of the bald statement to this effect of P.W. 7—Zora Singh and P.W. 8—Amar Nath Sarpanch. It is pertinent to note that neither of these witnesses deposed to any specific incident or happening on the basis of which they formed opinion that there were illicit relations between Amarjit Kaur and Harnek Singh. There is no suggestion even that they were ever seen in a compromising position or that there was any display of affection between them or even that there was any protest by the husband or the

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children of Amarjit Kaur in this regard. Amar Nath Sarpanch had no doubt stated that on August 15, 1986, he had intervened in a quarrel between Harnek Singh and the two deceased on this account, but yet, he would have the Court believe that they were sitting together taking liquor. There is then other curious circumstance of Harnek Singh living in the house of the deceased. It cannot be accepted that if Santokh Singh harboured such suspicion against Harnek Singh and his wife Amarjit Kaur, he would permit Harnek Singh to live in his house. On the face of it, therefore, this testimony of Amar Nath Sarpanch and Zora Singh is wholly unworthy of reliance.

(12) Turning now to the extra-judicial confession said to have been made by Harnek Singh to the wine contractor Gurdev Singh, it would indeed be straining ones credibility to accept the veracity of this part of the prosecution case. As observed in *Hari Kishan v. State of Haryana* (1), "An extra-judicial confession is usually looked upon as a weak type of evidence and therefore, whenever it is sought to be relied upon, the burden lies upon the prosecution to show its trustworthiness. In order to render such confession worthy of belief, regard must be had to :—

- (i) the person to whom it was made ;
- (ii) the connection, if any, of the accused with him ;
- (iii) the occasion or reason for the accused to go and make such a confession to him ; and
- (iv) the circumstances in which it was made.

Besides all this, the extra-judicial confession must be considered in the over-all context of the prosecution case and the evidence on record".

(13) A reading of the testimony of P.W. 6—Gurdev Singh would show that there was no previous connection between him and Harnek Singh. There was no relationship between them and they came from different villages. Gurdev Singh was thus not in such a position, *viz-a-viz*; Harnek Singh that he could repose confidence in him to confess to a heinous crime like the murder of two brothers, in this case.

(14) The other circumstance that drains the testimony of Gurdev Singh of reliability is his statement that after the confession

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(1) Cri. Appeal No. 494—D.B. of 1987 decided on 10th August, 1989.

had been made to him by Harnek Singh, he left him at his liquor vend, while he went to village Phasse which was 6 to 7 kilometres away to inform the police about him being there, and, what is more, he says that despite Inspector Maghar Singh being told of Harnek Singh being at his liquor vend, no police force was sent with him when he went back to fetch Harnek Singh.

(15) Finally, there is the matter regarding the recovery of the dead bodies consequent upon the disclosure statement made by Harnek Singh. In dealing with this matter, it must, at the very out-set be observed that even if it be accepted that the dead bodies were indeed recovered at the instance of Harnek Singh, this evidence by itself cannot bring home the charge against either Amarjit Kaur or Harnek Singh beyond reasonable doubt. That apart, it will be seen that this evidence again rests upon the testimony of P.W. 6—Gurdev Singh and P.W. 8—Amar Nath besides the investigating officer, P.W. 10—Inspector Maghar Singh. As has been shown earlier, these persons figure as witnesses with regard to all the pieces of evidence put-forth by the prosecution to connect Amarjit Kaur and Harnek Singh with the commission of the crime. This circumstances, by itself, creates its own doubts, particularly in the context of the testimony of these witnesses having been found to be questionable in other aspects. This being so, it would clearly not be safe to accept their testimony with regard to this part of the prosecution case either.

(16) As regards the evidence of Zora Singh concerning his visit to the house of Santokh Singh deceased on August 25, 1986 and the suspicions aroused by the replies given to him and later to him and Amar Nath Sarpanch too by Amarjit Kaur and Harnek Singh regarding the whereabouts of the deceased, it will be seen that even as per his own showing, there was no particular reason or occasion for him to have gone to the house of the deceased on that day. He does not say that he had any purpose or other work with them. He is also not a person who belongs to their village. In this situation, this part of his testimony too cannot be relied upon.

(17) Such thus being the state of evidence on record and the circumstances being as spelt out thereby, there can be no escape from the conclusion that the prosecution has failed to bring home the charge, as framed against Amarjit Kaur and Harnek Singh and their conviction and sentence are accordingly hereby set aside. This appeal is thus accepted. Harnek Singh, who is in custody, is

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(K. S. Bhalla, J.)

directed to be released from jail forthwith while the bail bonds of Anarjit Kaur, who is on bail, shall stand discharged.

(18) Before parting with this case, we are constrained to remark that in the matter of extra-judicial confessions, there appear to be a growing tendency on the part of the investigating agencies to introduce such confessions and of the nature and quality as in the present case, tending inevitably to create thereby the unfortunate impression of such evidence having perhaps been falsely concocted to bolster up an otherwise unsustainable charge. Such a practice is indeed to be deprecated. We must, however, hasten to add that this is not to be understood as implying that an extra-judicial confession is not or cannot be used as a valuable piece of evidence. It is rather to emphasise that when evidence of an extra-judicial confession is sought to be used, the investigating agencies must ensure that it meets the test of credibility in the light of the observations in *Hari Kishan's* case (supra). We accordingly direct that a copy of this judgment be sent to the Director-Generals of Police of Punjab and Haryana and also to the Inspector-General of Police, Chandigarh, for information and necessary action.

P.C.G.

FULL BENCH

Before : G. C. Mital, K. S. Bhalla and A. L. Bahri, JJ.

KAMAL KUMAR GUPTA,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 8855 of 1988.

3rd August, 1990.

*Constitution of India, 1950—Arts. 226/227—Punjab Civil Services (Executive Branch) Rules, 1930—Rules 5, 6 and 7—Rules providing for minimum age limit—No written or viva voce test held—Commission not considering the youngest candidate and candidates above 55 years—Such action—Whether amounts to upsetting the basic qualifications.*

*Held*, it is not the function of an advisory or a recommendatory body to lay down to eligibility qualification or to upset the