Before Sureshwar Thakur & N.S. Shekhawat, JJ.

MANDEEP SINGH AND ANOTHER—*Appellants*

versus

STATE OF PUNJAB—*Respondent*

CRA-D No. 933 of 2009 (DB)

August 31, 2022

Indian Penal Code—S.34, 302, 411—Appeal on conviction—circumstantial evidence—Held, for a crime to be proved it is not necessary that the crime must be seen to have been committed and must in all circumstances be proved by direct ocular evidence by examining those persons who had seen it's commission, before the court. The offence can also be proved by circumstantial evidence, the principal fact or the factum probandum may be proved directly by means of certain inferences drawn from factum probandum that is the evidentiary facts.

Held, that a perusal of the record would reveal that it is a case based on circumstantial evidence. Before analyzing the factual aspects, it may be stated that for a crime to be proved, it is not necessary that the crime must be seen to have been committed and must in all circumstances be proved by direct ocular evidence by examining those persons before the court, who had seen its commission. The offence can be proved by circumstantial evidence also. The principle fact or the factum probandum may be proved in directly by means of certain inferences drawn from factum probans, that is the evidentiary facts**.** To put it differently, circumstantial evidence is not direct to the point in issue, but consists of evidence of various other facts which are so closely associated with the facts in issue that when taken together, they form a chain of circumstances, from which the existence of the principle fact can be legally inferred or presumed.

(Para 12)

Further held, that in view of what has been observed above, we are of the considered view that the circumstantial evidence led by the prosecution is not enough to hold the appellants guilty of the charge framed against them. There are many chinks in the link of circumstantial evidence led by the prosecution and therefore, it

is not safe to convict the appellants of a murder charge for which they faced trial.

(Para 24)

Harpreet S. Rakhra, Advocate, *for the appellants.*

Aman Dhir, D.A.G., Punjab.

N.S. SHEKHAWAT, J.

(1) Appellants, Mandeep Singh and Narinder Pal Singh have been convicted under Sections 302 and 411 IPC by the Court of learned Sessions Judge, Fatehgarh Sahib and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each for offence under Section 302 IPC and in default of payment of fine, they were ordered to further undergo rigorous imprisonment for six months each. They were sentenced to undergo imprisonment for one year each, besides, pay a fine of Rs.1,000/- each for the offence under Section 411 IPC and in default of payment of fine, they were ordered to further undergo rigorous imprisonment for one month, vide judgment of conviction dated 22.08.2009 and order of sentence dated 28.08.2009. The appellants have preferred the present appeal before this Court with a prayer to set aside the above-said impugned judgment of conviction and order of sentence.

(2) The law was set in motion with the registration of FIR No.45 dated 01.11.2006 under Sections 302/34 IPC Police Station Fatehgarh Sahib at the instance of Harman Singh (PW-1), brother-in-law of Gurmukh Singh (since deceased). In the above-said FIR (Ex. PA), the complainant alleged that Gurmukh Singh, his brother-in-law, who was residing in village Bohar and was doing agricultural works, was the owner of property there. On 27.10.2006 at about 09.00 AM, his brother-in-law Gurmukh Singh had gon to fetch meal from his field son his scooter bearing Registration No. PB-26-B-7143, who did not return back. Consequently, the complainant lodged missing report vide DDR No. 14 dated 28.10.2006 at Police Station Sadar Khanna. He along with his relatives searched for Gurmukh Singh. Later on, he came to know from Police Station, Sadar Khanna that one scooter of cream colour without registration number had been recovered by the police of Police Station, Fatehgarh Sahib from the possession of Mandeep Singh and Narinder Pal Singh, present appellants. Consequently, he along with relatives went to Police Station, Fatehgarh Sahib and identified the said scooter. He stated that this was the same scooter, which was missing along with Gurmukh Singh since 09.00 AM on 27.10.2006. He

further alleged that in the evening, Narinder Singh, who was known to the complainant told him that at about 11.30 AM on 27.10.2006, he had seen two young boys fighting with a Sikh gentleman. Thereafter, the said Narinder Singh came to know his name as Gurmukh Singh son of Joginder Singh, with whom the accused were exchanging hot words and had scuffled. The said two young men were saying to Sikh gentleman that they would teach him a lesson for allegedly meeting Rekha. The said two persons ran away from the spot on their scooter. The complainant raised the suspicion in the FIR that his brother-in-law Gurmukh Singh had been killed after abduction by the accused Mandeep Singh and Narinder Pal Singh. The complainant came to the Police Station with Ranjit Singh and Harminder Singh, Panchayat Member for giving complaint to the police and consequently the FIR was registered at about 07.15 AM on 01.11.2006. After registration of the FIR, the final report under Section 173 of the Code of Criminal Procedure was filed against the present appellants.

(3) During the course of trial, the prosecution examined Harnam Singh/complainant as PW-1; Jasvir Singh as PW-2; Santokh Singh as PW-3; Gurmukh Singh as PW-4, Swaran Singh as PW-5, Shamsher Singh as PW-6, Narinder Singh as PW-7, Himmat Singh as PW-8, ASI Narinder Singh as PW-9, SI Kamikar Singh as PW-10, Dr. Parminder Singh Bhatti as PW-11, ASI Sukhbir Singh as PW-12, MHC Satpal Singh as PW-13 and Bhushan Kumar as PW-14.

(4) After closure of the prosecution examination, both the accused were examined under Section 313 of the Code of Criminal Procedure. Accused-Mandeep Singh stated that he had been wrongly framed in the instant case and he had no connection with the commission of the offence in question. He belonged to village Narangwal, District Ludhiana, whereas co-accused Narinder Pal Singh, who is his cousin, hailed from village Shrpur Khurd in District Ludhiana. Even the deceased was not known to them nor they had any dealings with him. He stated that he and Narinder Pal Singh had never visited village Talania nor they had any alleged quarrel with Gurmukh Singh (since deceased) on 27.10.2006 in the area of village Talania and the prosecution had put up a coined story. It was further stated that ASI Narinder Singh (PW-9) had not effected any recovery from him norfrom his cousin and the police had concocted a false story in order to frame him and his cousin Narinder Pal Singh, co-accused. Narinder Pal Singh, appellant No.2, also made similar statement under Section 313 of the Codeof Criminal Procedure.

(5) To rebut the case of the prosecution, the appellants examined Gurmeet Singh son of Jarnail Singh as DW-1, who was also known as `Bata'; Manjit Singh son of Swaran Singh as DW-2; Puran Masih, Post- Master, Sub Post Office, Fatehgarh Sahib as DW-3 and Gurdish Singh sonof Late Sh. Jai Singh as DW-4, who is father of Baldev Singh (owner of Scooter bearing Registration No.PB-23-9052), on which the appellants were allegedly riding at the time of alleged incident.

(6) The trial commenced before the Court of learned Sessions Judge, Fatehgarh Sahib and culminated in the conviction of both the appellants, who were convicted under Sections 302 and 411 IPC and were sentenced as noticed above.

(7) Aggrieved of the impugned judgment of conviction and order of sentence passed by the Court of learned Sessions Judge, Fatehgarh Sahib, both the appellants have filed the present appeal before this Court for setting aside the above-said impugned judgment.

(8) Learned counsel for the appellants has vehemently argued that there is an unexplained and inordinate delay of 05 days in reporting the matter to the police, which could not be explained by the prosecution till conclusion of the trial. Even the witnesses produced by the prosecution were either related to the complainant side or they were the official witnesses and had a reason to depose against the present appellants. It has further been argued that PW-1 Harnam Singh is the brother-in-law of the deceased; PW-2-Jasvir Singh is the brother of the wife of the complainant, PW-4 Gurmukh Singh son of Gurmail Singh is again the brother-in-law of Gurmukh Singh (since deceased), whereas PW-7 Narinder Singh was distantly related to the complainant. It has further been argued that the police had relied upon the evidence pertaining to the recovery of scooter of the deceased from the appellants even prior to lodging of the FIR, which is highly doubtful and the recovery was planted.

(9) Learned counsel has further assailed the testimonies of PW-3 Santokh Singh and PW-7 Narinder Singh, who had allegedly seen the appellants being fighting with Gurmukh Singh (since deceased), on the day when he went missing. Even the said witnesses were neither known to the accused or the deceased. Consequently they had no reason to know about the death of Gurmukh Singh nor about the registration of the FIR. Still further, identification of the scooter of the deceased was made from the sticker "Modern Jat"

affixed on it, whereas the said fact was not mentioned in the DDR, which was lodged in the Police Station, Fatehgarh Sahib or Police Station Khanna. Still further, it was confessed before the Court that the dead body was not in a fit condition for identification and the appellants had been falsely implicated. Still further, the prosecution had miserably failed to prove the manner, in which the injuries had been caused and thus, the entire story was doubtful with regard to the same. Further, learned counsel submitted that the appellants had no reason to make an extra judicial confession before PW-5 Swaran Singh and his statement was also liable to be disbelieved. He was neither a person, who wielded influence nor he was holding any position. Still further, he was a stranger and the appellants had no reason to make a statement before him. The appellants had allegedly gone to Swaran Singh-PW5 at the behest of one 'Bata', but the police neither joined 'Bata' in the investigation nor he was examined as a witness by the prosecution. Even the prosecution had miserably failed to prove the motive in the instant case as Gurmukh Singh (since deceased) was seen by the accused/appellants at the house of Rekha but neither Rekha was examined nor any evidence was led by the prosecution, which prompted the appellants to commit the crime in such a barbaric manner. Thus, the story of the prosecution was highly improbable and the appellants had been framedin the instant case.

(10) Controverting the arguments raised above, the learned counsel for the State has submitted that it was a case based on circumstantial evidence. The prosecution had been able to complete the chain of circumstances, which unerringly established the charge under Sections 302/411/34 IPC against the appellants. The prosecution examined PW-3 Santokh Singh and PW-7 Narinder Singh, who had seen the accused/appellants quarreling with Gurmukh Singh (since deceased) on the fateful day, when he went missing from his home without any intimation to his family members. Both the witnesses were neither inimical to the appellants nor related to the complainant side. Consequently, their testimonies lend credence to the case of the prosecution. Furthermore, the recovery of said scooter of the deceased from the possession of the accused- appellants on 29.10.2006 by ASI Narinder Singh during routine patrol duty, was another clinching circumstance, which proved the complicity of the accused-appellants in the commission of crime. Still further, the police not only took into possession the scooter of the deceased under Section 102 Cr.P.C. but also reported the matter to the Court on 30.10.2006 and the court of learned Additional Chief Judicial Magistrate directed depositing of the

said scooter in the malkhana as the accused could not produce any document of ownership of the scooter. The learned Additional Chief Judicial Magistrate also directed that accused/appellants would have the right to get the scooter back on producing the original RC/documents of ownership. Thus, he has prayed that the impugned judgment of conviction and order of sentence may be ordered to be upheld.

(11) We have heard the learned counsel for the parties at length and with their able assistance, we have gone through the voluminous record of the instant case as well as testimonies of witnesses produced by the prosecution as well as defence.

(12) A perusal of the record would reveal that it is a case based on circumstantial evidence. Before analyzing the factual aspects, it may be stated that for a crime to be proved, it is not necessary that the crime must be seen to have been committed and must in all circumstances be proved by direct ocular evidence by examining those persons before the court, who had seen its commission. The offence can be proved by circumstantial evidence also. The principle fact or the factum probandum may be proved in directly by means of certain inferences drawn from factum probans, that is the evidentiary facts**.** To put it differently, circumstantial evidence is not direct to the point in issue, but consists of evidence of various other facts which are so closely associated with the facts in issue that when takentogether, they form a chain of circumstances, from which the existence of the principle fact can be legally inferred or presumed.

(13) In ***Hanumant Govind Nargundkar and another*** *versus* ***State of Madhya Pradesh***[1], it was observed as under:-

> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of

[1] AIR 1952 SC 343

the accused and it must be such as to show that within all human probability the act must have been done by the accused.

(14) In the facts of the case, a reference may also be made to the law laid down by the Hon'ble Supreme Court in the matter of ***Sharad Birdhichand Sarda*** *versus* ***State of Maharashtra***[2]. While dealing with circumstantial evidence, Hon'ble the Supreme Court has held that onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in the prosecution cannot be cured by false defence or plea. The Hon'ble Supreme Court laid down the following conditions, before conviction could be based on circumstantial evidence and those are:-

> "(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established;
>
> (2). the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
>
> (3) the circumstances should be of a conclusive nature and tendency;
>
> (4) they should exclude every possible hypothesis except the one to be proved; and
>
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

(15) In ***Padala Veera Reddy*** *versus* ***State of A.P. and others***[3], it was laid down by the Hon'ble Supreme Court that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

> "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (2) those circumstances should be of a definite tendency

[2] AIR 1984, SC 1622
[3] 1990(2) RCR (Crl.) 26 (SC)

unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

(16) In the instant case, the learned trial Court relied upon the testimonies of PW-3 Santokh Singh and PW-7 Narinder Singh, who had allegedly seen both the accused fighting with Gurmukh Singh (since deceased). We have perused the depositions made by PW-3 and PW-7, which do not inspire confidence. PW-3 Santokh Singh stated that on 27.10.2006, he along with his wife came to Gurdwara on his scooter. When they were going to village Naraingarh to meet their daughter, the tyre of his scooter got punctured. PW-3 Santokh Singh changed the same and while they were starting their scooter, he saw the appellants coming on a scooter and they were addressing the person on other scooter as Gurmukh Singh (since deceased). The accused/appellants brought their scooter in front of the scooter of Gurmukh Singh (since deceased) and said that they would teach him a lesson. Gurmukh Singh (since deceased) said to the accused that he was not afraid of them and they grappled each other. After that, Gurmukh Singh (since deceased) rescued himself and ran away from the spot on his scooter. PW-3 Santokh Singh told his wife that they should leave the place as the accused were drunkard and the incident is stated to have taken place at about 01.00 PM on 27.10.2006. On 01.11.2006, he came to know that Gurmukh Singh had been murdered by the accused and he made a statement to the police on 02.06.2006 (wrongly typed in the testimony). However, in the cross-examination, PW-3 Santokh Singh admitted that he did not know the accused before hand or Gurmukh Singh (since deceased). He had no idea about any enmity between the accused and the deceased. He did not know whether the accused and the deceased were related to each other or not. He did not know the complainant. Evenno injuries were inflicted on the person of deceased by the accused in his presence with any weapon. He left the spot and the accused were still present at

the spot. However, he later deposed that he left the spot after the accused. He did not see the accused or the deceased, on their way to village Naraingarh from the spot. He came to know at Khamano that Gurmukh Singh had died. He could not tell the name of the person who had told him about the death of Gurmukh Singh. He also could not tell the name of the person who had witnessed the occurrence. He could not produce the ticket vide which he gave money for offering (Parshad) in Gurdwara. Thus, it is held that the testimony of PW-3 Santokh Singh does not inspire confidence. He neither knew the accused nor Gurmukh Singh nor the complainant. It is not understandable as to how he came to know about the death of Gurmukh Singh nor he could disclose the name of person, who told him about the death of Gurmukh Singh. Even he admitted that no injuries were inflicted bythe accused on the person of deceased in his presence with any weapon. He witnessed the occurrence, but made no efforts even to separate the deceased and the accused. He could not produce any evidence to show that he had gone to Gurudwara Sahib.

(17) Similarly, the presence of PW-7 Narinder Singh at the spot is also doubtful. He is stated to be a witness, who had last seen the accused fighting with the deceased at about 11.30 AM on 27.10.2006. He saw that the accused were quarreling with Gurmukh Singh (since deceased) and they were threatening to teach him a lesson for visiting the house of Rekha. After that, the accused fled away on one scooter and the victim also left on a separate scooter towards Khanpur side. He disclosed this to complainant- Harnam Singh. In cross-examination, he admitted that before 27.10.2006, neither the accused nor Gurmukh Singh (since deceased) were known to him. He came to know from the persons present at the spot regarding the name of the accused. However, it is not known as to how he came to know about the name of Gurmukh Singh (since deceased). Still further, he failed to explain as to how he came to know about the death of Gurmukh Singhand about the occurrence of the offence. It appears that both the witnesses had stated incorrect facts while deposing before the court and the last seen witnesses are liable to be disbelieved.

(18) The next circumstance relied upon by the learned trial court is the recovery of scooter of the deceased from the appellants on 29.10.2006. It was alleged by the complainant that on 27.10.2006, Gurmukh Singh (since deceased) went from his home on a scooter bearing Registration No.PB-26-B-7143**.** The learned trial Court placed reliance on Ex.PK, the recovery memo, vide which the scooter Make

'Bajaj Chetak' having scratched number plates on both sides was recovered by ASI Narinder Singhon 29.10.2006; Ex.PM, i.e. the copy of DDR No.20 dated 29.10.2006, Police Station Fatehgarh Sahib under Section 102 Cr.P.C; Ex.PN is application made by the police and Ex. PN/A, i.e., the copy of the order dated 30.10.2006 passed by the court of learned Additional Chief Judicial Magistrate, Fatehgarh Sahib. In fact, the said circumstance also does not connect the appellants with the commission of crime. A perusal of the above-said four exhibits would reveal that these documents referred to the recovery of a scooter, having scratched number plates on both the sides. Gurmukh Singh (since deceased) was allegedly riding on scooter bearing Registration No.PB-26-B-7143. However, in none of these four exhibits, the number of scooter has been mentioned. There is nothing on record to connect the said scooter with Gurmukh Singh (since deceased). Only the chassis number and engine number have been mentioned in all the above- mentioned four exhibits. The prosecution led no evidence to show that the said chassis number and engine number belonged to the scooter of thedeceased. Even on 16.11.2006, PW-10 SI Kamikar Singh moved an application to the Registration Authority, Khanna where only registration number of the scooter of the deceased was mentioned. Even the Registering and Licensing Authority, Khanna, reported that the ownership of Scooter bearing Registration No. PB-26-B-7143 is with Gurmukh Singh (since deceased). The police was under a legal obligation to move an appropriate application with regard to not only registration number of the scooter but also with regard to the engine number and chassis number of the scooter. Consequently, the recovery of scooter prior to the registration of the FIR is highly doubtful and does not help the case of the prosecution in any manner.

(19) The learned trial Court has also relied upon various recoveries made from the accused/appellants during the course of investigation. The learned trial Court placed heavy reliance on recovery of Registration Certificate and Pollution Certificate of the scooter of the deceased from appellant/accused Mandeep Singh, vide memo Ex.PD dated 07.11.2006 and recovery of number plate of scooter of the deceased vide Ex.PE from Narinder Pal Singh, appellant No.2 in pursuance of their respective disclosure statements while in police custody. Again the said circumstance would clearly show that the recovery of the said materials from the accused did not connect them with the alleged crime. The police allegedly recovered the scooter of the deceased vide recovery memo Ex.PK on 29.10.2006. In the said recovery memo, it is clearly mentioned that the scooter Make

'Bajaj Chetak;' was having scratched number plates on both the sides. Nowhere in the recovery memo, Ex.PK, it has been mentioned that the number plates of the scooter had been removed. Rather the said recovery memo shows that the numbers were scratched. Consequently, the recovery of number plates from Narinder Pal vide recovery memo Ex.PE dated 07.11.2006 raises a big question mark on the case of the prosecution. Secondly, the police recoveredRegistration Certificate and Pollution Certificate of the scooter of the deceased allegedly from Mandeep Singh-appellant No.1 and number plate of the scooter from Narinder Pal Singh, appellant No.2. If the accused had committed the murder of Gurmukh Singh, while he was riding on a scooter, the appellants had no reason to hide or retain the RC, Pollution Certificate and number plate of the scooter of the deceased. If the accused had chosento abandon the scooter of the deceased, after commission of the crime, they had no reason to retain RC, Pollution Certificate and number plate of the scooter with them. Rather they would have thrown the said incriminating material, as they were looking to dispose off the dead body, scooter and other incriminating evidence.

(20) The learned trial Court heavily relied upon the statement of PW-5 Swaran Singh, who deposed that on 03.11.2006, he was present in houseand both the accused made extra judicial confessions before him that they had committed a blunder by murdering Gurmukh Singh and requested him that they should be produced before the police. Then he enquired from the accused about the cause of murder. Both the accused replied that Rekha resident of Talania had illicit relations with them. They had gone to the house of Rekha and Gurmukh Singh (since deceased) was also presentunder the influence of liquor. They had altercation with Gurmukh Singh and Rekha Rani had turned them out from her home. Even Gurmukh Singh was turned out of the home. Then they went towards GT Road while quarreling. They gave two brick blows on the head of Gurmukh Singh and after he succumbed to his injuries, the dead body was thrown into Sirhind Canaland thereafter both the accused left the place. However, in cross-examination, he stated that before 03.11.2006, the accused were not known to him nor they had met him anywhere. He did not produce the accused before the police. 'Bata' a resident of his village, who was residing at Sirhind, had sent both the accused to him. He further deposed that accused had not told him about the FIR Number, date and Section of IPC underwhich they were charged. They stated that the police had already taken into possession their scooter. When the accused came to his house, he did not enquire from 'Bata' on

telephone as to whether he had sent the accused tohis house or not. The accused stayed in his house for about 01 hour andwhile the accused were in his house, he did not inform any police authority. He further admitted that SHO, Police Station, Fatehgarh Sahib was known to him in those days. He further admitted that even the complainant was not known to him and he did not know any official except the said SHO. Again, it is held that the testimony of PW-5 Swaran Singh does not inspire any confidence. PW-5 Swaran Singh is not a person, who held any position anywhere. He did not know any official except SHO Police Station, Fatehgarh Sahib. He allegedly came to know about the occurrence and the accused stayed in his house for about 01 hour, but he made no attempts to inform either the SHO or any other police official regarding the presence of the accused. Every citizen is under a legal obligation to inform the police, whenever he comes to know about the commission of a cognizable offence. Even otherwise, it was natural for him to inform the police when some unknown criminals come to his house after the commission of a serious crime like murder. Still further, he admitted that prior to 03.11.2006, neither the accused were known to him nor he had met them any where. Consequently, the accused had no reason to repose confidence in him and to request him to produce before the police. He was neither a man in authority nor the accused were known to him. Thus, it is highly improbable that the accused would approach such a person and would confess their crime before him.

(21) It has been held in catena of judgments that extra-judicial confession is a weak type of evidence and further corroboration is required by leading some cogent evidence, which is missing in the instant case. It has been so held by the Hon'ble Supreme Court in ***Tejinder Singh @ Kaka*** *versus* ***State of Punjab***[4] in para 24 of its judgment, whichreads as under:-

> "24. The extra judicial confession is a weak form of evidence and based on such evidence no conviction and sentence can be imposed upon the appellants and other accused. In support of this proposition, the relevant paragraphs of Panchos case are extracted hereunder:
>
> "16. The extra-judicial confession made by A-1, Pratham is the main plank of the prosecution case. Itis true that an extra-judicial confession can be used against its maker,

[4] 2013 (12) SCC 503

but as a matter of caution, courts look for corroboration to the same from other evidence on record. In Gopal Sah v. State of Bihar this Court while dealing with an extra-judicial confession held that an extra-judicial confession is on the face of it, a weak evidence and the courts are reluctant, in the absence of a chain of cogent circumstances, to rely on it for the purpose of recording a conviction. We must, therefore, first ascertain whether the extra-judicial confession of A-1, Pratham inspires confidence and then find out whether there are other cogent circumstances on record to support it."

.....

25. This Court further noted that: (Kashmira Singh case, AIR p. 160, para 10)

"10. cases may arise where the Judge is not prepared to act on the other evidence as it stands even though,if believed, it would be sufficient to sustain a conviction. In such an event, the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession, he would notbe prepared to accept."

27. This Court in Haricharan case further observed that Section 30 merely enables the court to take the confession into account. It is not obligatory on the court to take the confession into account. This Court reiterated that a confession cannot be treated as substantive evidence against a co-accused. Where the prosecution relies upon the confession of one accused against another, the proper approach is to consider the other evidence against such an accused and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused, the court turns to the confession with a view to assuring itself that the conclusion which it is inclined to draw from the other evidence is right."

Further, relevant paragraphs from Sahadevans case are extracted hereunder:

"14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence.

Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

.....

16. Upon a proper analysis of the above referredjudgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

(i) The extra-judicial confession is weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law."

(22) Still further, PW-5 Swaran Singh stated that both the accused had come together and had made the confession before him

jointly. Be that as it may, the extra-judicial confession which was said to have been made by the appellants before PW-5, cannot be accepted in evidence for the simple reason that it was a joint one. This Court finds strength from the judgments passed by this Court in the matter of ***Ajit Masih*** *versus* ***State of Punjab***[5] and ***Harikant*** *versus* ***State of Haryana***[6], where the joint confession by the accused was held to be inadmissible in evidence. Furthermore, the appellants were never produced by PW-5 Swaran Singh before the police for the reasons well known to him. Rather the prosecution introduced Shingara Singh as a person, who produced both the accused before SI Kamikar Singh on 06.11.2006. Again surprisingly the prosecution did not examine Shingara Singh, which is a severe blow to the case of the prosecution.

(23) The prosecution was bound to prove the motive for commission of the crime, being a case of circumstantial evidence. PW-5 Swaran Singh stated that both the appellants had illicit relations with Rekha, resident of Talania. When they went to the house of Rekha, they found Gurmukh Singh (since deceased) was present there under the influence of liquor. They had altercation with Gurmukh Singh and Rekha turned them out of her house. Thereafter, they went out quarreling with each other and ultimately the injuries were caused with two bricks on the head of Gurmukh Singh. When he succumbed to his injuries, his dead body was thrown into Sirhind Canal. The prosecution utterly failed in proving the enmity between the accused and the complainant. Neither Rekha was examined as a witness nor any other person from village Talania was examined as a witness to prove the enmity/motive for commission of the crime. When direct evidence/eye witness account is available in a criminal trial, the motive for commission of crime pales into insignificance. However, to complete the chain of circumstances in a case based on circumstantial evidence, the prosecution is obliged to prove the motive for commission of a crime. In the instant case, the prosecution led no evidence to show the motive on the part of the appellants to commit the crime, as alleged by the prosecution.

(24) In view of what has been observed above, we are of the considered view that the circumstantial evidence led by the prosecution is not enough to hold the appellants guilty of the charge framed against them. There are many chinks in the link of circumstantial evidence led by the prosecution and therefore, it is not

---

[5] 1988 (1) RCR (Crl.) 256
[6] 1999 (2) RCR (Crl.) 91

safe to convict the appellants of a murder charge for which they faced trial.

(25) Consequently, the present appeal is allowed and the impugned judgment of conviction dated 22.08.2009 and order of sentence dated 28.08.2009 passed by the learned Sessions Judge, Fatehgarh Sahib are set aside. The appellants are ordered to be set at liberty forthwith, if not required in any other case.

Dr. Payel Mehta