

Sharifulla Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-24-2003

Reported in : 2003CriLJ4768; RLW2004(1)Raj114

Judge : Shiv Kumar Sharma and; Khem Chand Sharma, JJ.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : D.B. Criminal Appeal No. 34 of 1998

Appellant : Sharifulla

Respondent : State of Rajasthan

Advocate for Def. : B.M. Sharma, Public Procecutior

Advocate for Pet/Ap. : Kamla Jain,; Mahendra Singh,; R.S. Chauhan and;

Disposition : Appeal dismissed

Judgement :

K.C. Sharma, J.

1. These two criminal appeals, on by appellant Sharifulla and another by Inam have been filed against the judgment of conviction and order of sentence dated 10.09.1997 passed by the learned Special Judge, scheduled Caste and Schedule Tribes (Prevention of Atrocities) Cases and Additional Sessions Judge Dausa,

thereby convicting both the appellants for offence under Section 302 IPC and sentencing them to undergo life imprisonment and to pay fine of Rs. 2,000/- each. In default there to further undergo six months' simple imprisonment.

2. Briefly stated the facts of these two appeals are that on 1.1.1989 Mohan Singh P.W. 7 submitted a written report Ex. P8 at Police Station Mahuwa, District Sawai Madhopur (presently in District Dausa) mentioning therein that on 1.1.1989 at about 7.00 in the morning at some distance from their hotel number of persons had collected and on inquiry it was revealed that some person had thrown the body of unknown person in the pits on the road side. It was also mentioned the intestines of the person are lying on the road and the body is lying in the pits on the road side. Thus, the police was requested to reach at the place of occurrence and to take legal action. On the basis of this information, FIR No. 1/89 (Ex.P16) was chalked out for offence under Section 302 IPC and investigation commenced.

3. Having registered the FIR, police rushed to the place where dead body was lying and prepared the inquest report, Ex.P7, site plan Ex.P10 and seized he cloths of deceased vide memo Ex. P9. On 19.1.89 one Sagir Ahmed, PW 20 also submitted a typed report at Police Station Mahuwa. The accused, namely Sharifulla and Inam were apprehended by the police vide arrest memos Ex.P.21 and P.22, respectively. Accused Sharifullah furnished information, Ex.P26 under Section 27 of the Evidence Act and pursuant to his information, police recovered a knife vide memo Ex.P.11 Accused Sharifullah also furnished information (Ex.P.25) under Section 27 of the Evidence Act indicating the place where he threw the dead body of Bashir and crushed it by the truck. The police also got conducted autopsy on the dead body. In the post mortem report, the doctor who conducted post mortem examination opined that cause of death was hemorrhagic shock due to rapture of liver, spleen and kidney. After completion of investigation, police submitted a charge sheet against the appellants in the court of Judicial Magistrate, Hindaun City. The learned Magistrate, in turn, committed the case to the court of Sessions.

4. The learned trial court, on the basis of evidence and material collected during investigation and submitted before it and after hearing counsel for the parties,

framed charge under Section 302 IPC against the appellants. The appellants denied the charge and claimed trial.

5. In order to prove its case, the prosecution examined as many 26 witnesses and got exhibited some documents, therefore, the accused were examined under Section 313 Cr.P.C. In defence, the accused examined one witnesses DW 1 Allamudeen.

6. At the conclusion of trial, the learned trial court found the prosecution case as alleged proved as against the appellants and accordingly convicted and sentenced them as stated above. Hence the present appeals against conviction and sentence.

7. We have heard learned counsel for the parties and have carefully gone through the impugned judgment, the evidence and material on record.

8. The present case solely rests on circumstantial evidence. The circumstances put forth by the prosecution and relied upon the learned trial court may be stated below:

1. Both the appellants were employed as drivers on Truck No. USQ 565 and on 3.12.1998 the above truck loaded with goods of M/s. Anil Kumar & Sons had proceeded to Nadiyad and at that time deceased Basir was with the appellants;

2. On 12.1.89 when appellants came in the village with the truck, the deceased was not with them. When some of the witnesses enquired about deceased Basir, the appellants gave false explanation that Basir disappeared at Agra;

3. The truck in question passed through Agra Jaipur national Highway in the night intervening 31.12.88 and 1.1.89

4. Recovery of knife and tyre-lever at the instance and on the information of appellant Sharifullah, seizure of blood stained cloths of Sharifullah, and blood stained piece of regzine of back seat cover, and

5. Extra judicial confession by the appellants.

9. As regards the first circumstance, the prosecution has examined PW 20 Sagir Ahmed, PW18 Raj Kumar, PW 19 Amar Singh, PW 15 Sappo and PW 3 Alijan, PW 4 Samsuddin, PW 17 Rakam Singh and PW 2 Ali Hasan. PW 20 Sagir Ahmed, father of the deceased has deposed that his son Basir left alongwith Sharifullah in Truck No. U.S.Q. 565. According to this witness, the said truck proceeded to nadiyad at 11.00 PM. Driver Sharifullah and Inam returned back with the truck on 13th or 14th January, 1989, but Basir was not with them.

10. PW 15 Sappo has deposed that both the appellants were drivers on truck No. 565. According to him on 3rd December, 88 the said truck proceeded towards Gujarat and Basir had accompanied the appellants in the truck.

11. PW 18 Rajkumar, Munim of the firm M/s. Anil Kumar & Sons has deposed that 335 gunny bags of Gur' were loaded in Truck No. U.S.Q. 565 on 3.12.1988 through New Janta Truck Union, Samli and bilty, Ex.P.15 was issued. He further deposed that inam was the driver on the said truck, as mentioned in Ex.P.15.

12. PW 19 Amar Singh has deposed that at about 11 - 11.30 PM, Sagir sent his son with Sarifullah in a truck bearing No. U.S.Q. 565 and he was present there at that time.

13. PW 3 Alijan, PW 4 Samsuddin and PW 17 Rakam Singh have also certified the above fact. Similarly, PW 2 Ali Hasan has also deposed that Basir Accompanied the appellant in the truck. However, in cross examination he clarified that he was not present at that time.

14. Thus, from the evidence of PW 13 Alijan, PW 4 Samsuddin, PW 15 Sappo, PW 18 Raj Kumar, PW 19 Amar Singh and PW 20 Sagir Ahmed it is established that on 3.12.1988 deceased Basir had accompanied the appellants in the truck, while the loaded truck proceeded towards Nadiyad. Therefore, the first circumstances that deceased Basir accompanied the appellants on 3.12.1988 stands proved.

15. As to the second circumstances viz., the false explanation offered by the appellants about deceased Basir that he disappeared in Agra, on being confronted

by some of the persons, PW 20 Sagar, PW 2 Ali Hasan, PW 3 Alijan, PW 4 Samsuddin, PW 15 Sappo, PW 17 Rakam Singh and PW 19 Amar Singh have categorically deposed that when on 12.1.89 the appellants came in the village with the truck, they enquired the whereabouts of Basir as Basir was not with them. In reply, the accused appellants gave false explanation that Basir disappeared at Agra. It has come in their evidence that they tried to trace Basir at Agra, but they could not be able to trace him out. On scrutiny of the evidence of these witnesses it is amply proved that the accused appellants came back to their village along with the truck on 12th January, 89 and on being confronted as to the whereabouts of Basir, the appellants offered false explanation, which in our considered view provides an additional link to the chain of circumstantial evidence.

16. The truck in question having passed through Agra Jaipur National Highway in the night intervening 31.12.88 and 1.1.89 is the third circumstance. To prove this circumstance, the prosecution has relied upon the evidence of 3 witnesses. PW 23 Vimal Chand, Lower Division Clerk posted at the Commercial Tax Check Post, Unch-Ka-Nagla (between Agra & Bharatpur route) has deposed that as per office record Truck No. USQ 565 passed through the check-post on 31.12.88 and to certify the above fact the sent a letter, Ex.P19 to the S.H.O. under the signatures of Incharge of the Check Post.

17. PW 13 Bhagwan Singh, Sub Nakerdar, Municipal Council, Bharatpur who was, at the relevant time, posted at Octrai Check post Dhana Motel, has deposed that on 31.12.1988 at 9.45 PM Truck No. U.S.Q. arrived at Check post and he collected Rs. 14/-from deceased Basir, vide receipt No. 66 (Ex.P13).

18. PW 14 Manish Chand, Sub nakedar at Octroi Check Post Jaipur Road, Bharatpur has deposed that on 31.12.88 at 10.00 PM, truck No. U.S.Q. 565 passed through the check post and he refunded Rs. 14/- collected at Check post dhana vide, Ex.P14.

19. From the oral testimony of PW 13 Bhagwan Singh and PW 14 Manish Chand and from the documentary evidence (Exs. P13 and P14), it stands proved beyond doubt that in the night intervening 31.12.88 and 1.1.89, Truck No. U.S.Q. 565 passed through Uncha-nagla and Bharatpur and at that time Basir was present in

the truck. Although PW 13 Bhagwan Singh has stated that he did not see the face of Basir, but it is clear that the person who paid Rs. 14 and to whom the receipt Ex.P13 was issued had disclosed his name as Basir and accordingly receipt was issued in his name. The fact that Basir was very much present in the truck stands corroborated from the fact that Police found the dead body of Basir lying near the road side at Mahuwa, a place between Bharatpur and Jaipur. PW 24 Nasir Khan, Incharge of Police Station Mahuwa reached at the spot on 1.1.89 after the received information on telephone, he found body of a person lying near the side of road. Mohan Singh lodged the written report Ex.P8 to him. The Incharge got the photographs (Ex.s. P2 and P3) of the Dead body and also collected and seized articles and cloths of deceased vide memos Ex.P1 and P9.

20. It may also be noticed that on 19.1.1989, PW 20 Sagir Ahmed father of deceased lodged report at Police Station Mahuwa and identified the body of his son Basir on the basis of his photographs and cloths. Ali Hasan, Samsuddin and Alijan were also with him and they also identified deceased Basir. A memo, Ex.P4 was prepared by PW 25 Ramhet Sharma, SHO to this effect. In these circumstances, it is established that dead body found lying near the road side at Mahuwa was of Basir.

21. Now we proceed to deal with the IVth circumstance i.e. the recovery of knife and tyre-lever at the instance and on the information of appellant Sharifullah, seizure of blood stained cloths of Sharifullah, Seizure of blood stained cloths of Sharifullah, and blood stained piece of regzine of back rest of seat cover. Accused appellant Sharifullah was arrested on 22.1.89 vide memo Ex.P.21. He furnished information for recovery of tyre lever, Ex.P.23 on 24.1.1989 and Ex.P26 on 28.1.89 as regards recovery of knife. Consequent to the above information, a tyre rod and one bag were recovered vide memo Ex.P.24 and a knife was recovered vide memo Ex.P.11. On 1.2.89 the Investigating Officer also seized seat cover and piece of regzine of back rest of seat of Truck No. USQ 565 Vide memo Ex.P.12. He also seized shirt and trousers of accused Sharifullah which he was wearing. He found all these items stained with blood. The FSL report, Ex.P27 indicates presence of blood on the tyre rod and knife.

22. In cross examination, PW 25 Ramhet has admitted that appellants reached their village on 12.1.1989 with the truck and since 12.1.89 till the seizure of truck on 27.1.89, the said truck remained in possession of Rakam Singh. It need be observed that, as stated above, the seat cover and piece of regzine were seized on 1.2.89. Therefore, when truck was not in possession of the appellants after 12.1.1989, the so called seizure of seat cover and a piece of regzine has no meaning, specially when blood was also not detected. Similarly, Ramhet arrested accused Sharifullah on 12.1.1989 and there is no mention in the arrest memo, Ex.P21 that his cloths had blood stains. Strangely enough, why the Investigating Officer seized his cloths on 1.2.1989 even when no blood was detected over them. Therefore, this circumstance put forward by the prosecution and relied upon by the trial court is of no help to the prosecution.

23. However, knife was recovered at the instance and on the information of appellant Sharifullah. The motbirs of recovery, namely, PW 9 Nijam and PW 16 Samsudeen have certified the recovery. The knife recovered was found to be stained with blood. There is no dispute that knife was recovered from the forest, lying concealed in between the 'Akra' trees. Therefore, it may be concluded that the place where Sharifullah concealed the knife was in the specific knowledge and the fact that knife was recovered from the forest is of no help to the accused.

24. Learned counsel for the accused appellants have argued that the FSL report does not indicate the group of blood and therefore, the fact of recovery of knife is not sufficient to connect the accused with the crime. In support of his argument, Learned counsel relied upon a decision of the Apex Court in Surinder Singh v. State of Punjab (1).

25. We have considered the above argument and have carefully gone through the decision of the apex Court relied upon by the counsel for the appellants. In Surinder Singh's case (supra), referring to the statement of PW 2 it was concluded that his testimony was not of an inspiring nature and the other circumstance of recovery of blood stained knife without indicating the blood group raised doubts on the truthfulness of the prosecution case. Therefore, in our respectful opinion there is no legal ratio in the aforesaid decision that in all cases where there was failure

to detect the origin of blood, the circumstance arising from recovery of weapon would stand relegated to disutility.

26. In *Gura Singh v. State of Rajasthan* (2), while dealing with the effect of failure of the Serologist to detect the origin of blood, their Lordships of the Supreme Court referred the following observations in *State of Rajasthan v. Teja Ram* (3), an authoritative pronouncement of the Apex Court:

'25. Failure of the serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood struck on the axe would not have been human blood at all, sometimes it happens, either because the stain is the insufficient or due to haematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such guesswork that blood on the other axe would have been animal blood is unrealistic and far-fetched in the broad spectrum of this case. The effort of the criminal could should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objective, no benefit can be claimed by the accused.'

27. Having referred the above observations, their Lordships in *Gura Singh's* case (*supra*) held as under:-

'In view of the authoritative pronouncement of this court in *Teja Ram* cases we do not find any substance in the submissions of the learned counsel for the appellant that in the absence of the report regarding the origin of the blood, the trial court could not have convicted the accused. The Serologist and Chemical Examiner has found that the chadar (sheet) seized in consequence of the disclosure statement made by the appellant was stained with human blood. As with the lapse of time the classification of the blood could not be determined, no bonus is conferred upon the accused to claim any benefit on the strength of such a belated and state argument. The trial court as well as the High Court were, therefore, justified in holding the circumstances as proved beyond doubt against the appellant.'

28. Therefore, keeping in mind the above observations of the Apex Court, in the instant case, it must be concluded that recovery of knife stained with human blood at the instance and on the information of appellant Sarifullah is an incriminating circumstance against the appellant, though the blood ground could not be ascertained being disintegrated.

29. Having discussed the four circumstances and found them to be established beyond doubt, we are now left to consider the last and important circumstances of extra judicial confession of the accused made to the witnesses. Before advertng to the factual aspect of the matter and the evidence led in this behalf, we would like to discuss and refer the law propounded by the Apex Court as regards the evidentiary value of extra judicial confession and its pre-requisite.

30. Relying upon an earlier judgment in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* (4), their Lordships of the Supreme Court in *Maghar Singh v. State of Punjab* (5) held under:

'The second contention put forward by the counsel for the appellant was that there was no material corroboration of the statement of the appellant and the High Court had convicted the appellant on the basis of the extra judicial confession made by the two accused before some persons but that could not in law be regarded as any corroboration at all, because one tainted evidence cannot corroborate another tainted evidence. The evidence furnished by the extra judicial confession made by the accused to witnesses cannot be termed to be a tainted evidence and if corroboration is required it is only by way of abundant caution. If the court believes the witnesses before whom confession is made and it is satisfied that the confession was voluntary, then in such a case conviction can be founded on such evidence alone as was done in *Rao Shiv Bahadur Singh v. State of V.P.* (1), where their Lordships of the Supreme Court rested the conviction of the accused on the extra judicial confession made by him before two independent witnesses, namely, Gadkari and Perulakar. In the instant case also, after perusing the evidence of PW 3 and PW 12 we are satisfied that they are independent witnesses before whom both the appellant and accused Surjit Kaur made confession of their guilt and this therefore forms a very important link in the chain of circumstantial evidence. In out

opinion the argument proceeds on fundamentally wrong premises that the extra judicial confession is tainted evidence.'

31. In *Narain Singh v. State of M.P.* (6), their Lordships of the Supreme Court held as under:-

'Apart from this there is the evidence of PWs 5 and 9 who state on oath that one of the accused admitted before them that he had murdered the deceased. The learned Sessions Judge has brushed aside the evidence by presuming that their statements constituting an extra-judicial confession a very weak type of evidence: This is a wrong view of the law. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak of such a confession. In the instant case, after perusing the evidence of PWs 5 and 9 we are unable to find anything which could lead to the conclusion that these independent witnesses were not telling the truth. The evidence of these two witnesses (PWs 5 and 9) which lends support to the evidence of PW 11 was sufficient to warrant the conviction of the accused. The Sessions Judge has committed grave error of law in analysing and appreciating the evidence of PWs 5 and 9 and brushing them aside on untenable grounds.'

32. Again in *Kishore Chand v. State of Himachal Pradesh* (7), their Lordships observed as under:-

'.....The next piece of evidence is the alleged extra-judicial confession made by the appellant to PW 10. An unambiguous extra-judicial confession possesses high probative value force as it emanates from the persons who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of its falsity. But in the process of the proof of the alleged confession it is a voluntary one and does not appear to be the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act. Therefore, the Court has to look into the surrounding circumstances and to find whether the extra judicial confession is not inspired by any improper or collateral

consideration or circumvention of the law suggesting that it may not be true one. For this purpose the court must scrutinise all the relevant facts such as the person to whom the confession is made, the time and place of making, the circumstances in which it was made and finally the actual words used by the accused. Extra-judicial confession if found to be voluntary, can be relied upon by the court along with other evidence on record. Therefore, even the extra-judicial confession will also have to be proved like any other fact. The value of the evidence as to the confession depends upon the veracity of the witnesses to whom it is made and the circumstances in which it came to be made and the actual words used by the accused. Sometimes it may not be possible to the witness to reproduce the actual words in which the confession was made. For that reason the law insists on recording the statement by a Judicial Magistrate after administering all necessary warnings to the accused that it would be used as against him'.

33. In *Madan Gopal Kakkad v. Nawal Dubey* (8), the Apex Court held that the extra judicial confession which is not obtained by coercion, promise of favour of false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration.

34. Now in the light of the enunciation of law as discussed above, we propose to examine the evidence available on, record.

35. In order to establish the last circumstances, the prosecution has examined PW 20 Sagir Ahmed, PW 2 Ali Hasan, PW 3 Alijan, PW 4 Samsuddin and PW 15 Sappo. On scrutiny of their evidence it appears that these witnesses have deposed more or less similar about the confession of the accused appellant. As per these witnesses, the accused appellants confessed the murder of Basir and in details they admitted that Sarifullah inflicted injuries by tyre rod and knife on the person of Basir and then pushed him from the truck and appellant Inam crushed the body of Basir by over riding truck on him. Thereafter they threw the body of Basir by road side at mahuwa. Though there is slight variation in the statements of prosecution witnesses but the sum and substance of the testimony remained the same. We also find their statements in corroboration with the fact that after confession, the witnesses came to Mahuwa to find out the truth of the confession

of the accused and came to know about the dead body found by the road side. Therefore, the witnesses, on the basis of photographs and cloths, identified the dead body to be of Basir and then lodged the report, Ex.D2, which specifically mentions the fact of confession made by the appellants. The statements of these witnesses to the confession further find corroboration by the evidence of PW 22 Dr. Prathvi Raj Meena who found the following ante-mortem injuries on the corpse of Basir:

1. Bruise upon left shoulder 6 cm x 2 cm
2. Bruise upon left Arm 2 cm x 1/2 cm
3. Bruise upon left Arm 1-1/2 cm x 1/2 cm
4. Bruise upon left Arm 1 cm x 1/2 cm
5. Bruise upon left Arm 4 cm x 2 cm
6. Bruise upon left Forearm 9 cm x 3 cm
7. Lacerated wound upon left elbow 15 cm x e cm x 3 cm Ulna bone fracture seen.
8. Bruise upon left side of abdomen 18 cm x 12 cm.
9. Incised wound upon lower abdomen region 6 cm x 3 cm x 2 cm above pubic area.
10. Lacerated wound 36 cm x 14 cm x 5 cm upon pubic region up to left knee joint through which small intestine came out. Bladder and testis also came out. Laceration of penis.
11. Bruise 4 cm x 2 cm on right arm
12. Bruise 3 cm x 2 cm upon right forearm
13. Swelling 20 cm x 12 cm on right thigh. Fracture of femur bone.'

36. The doctor further found fracture of vertebra, left ulna bone and femur bone. He also found penis lacerated and testis came out from scrotum. He further found abdominal aorta and peritoneum, both kidneys, bladder spleen, gall bladder ruptured. The doctor opined that cause of death was hemorrhagic shock due to rupture of liver, spleen and kidney. The doctor also noticed presence of blood on N.H 11 - 3 feet x 3 1/2 feet region and faecal material spread in the area of 15 feet x 2.5 feet region on N.H 11, the doctor in his statement has opined that except injury No. 9 which happened to be an incised wound, other injuries may be caused in an accident. Therefore, the medical evidence is indicative of the fact that injury No. 9 may be inflicted by knife and other injuries may be the result of over-riding of truck tyres on the body.

37. Referring the evidence of PW 2 Ali Hasan, PW 3 Alijan, PW 4 Shamsuddin and PW 12 Sagir Ahmed before whom accused appellants confessed their guilt and pointing out some discrepancies in their statements, learned counsel for the appellants vehemently contended that conviction of the appellants cannot be based while considering alleged extra judicial confession as one of the strongest circumstances. Learned counsel argued that PWs 3, 4 are the uncle of deceased, while PW 20 Sagir Ahmed is the father of deceased and therefore it was highly unnatural for the appellants to have made confession to them as the appellants would not repose any faith or confidence in the above witnesses closely related to the deceased. It was argued that at the time when accused made confession before the above witnesses, the persons of neighbourhood were also present and thus, according to the learned counsel the extra judicial confession was made before total strangers. He submitted that it is highly unusual that a person would make an extra judicial confession before total stranger, in support of his argument learned counsel has relied upon a decision of this Court in *Kevji and Ors. v. State of Rajasthan* (9), wherein this court has held as under;-

'So far as extra judicial confession of accused Premji is concerned, PW 16 Rameng and PW 21 Dinesh Chandra have been produced on behalf of the prosecution and relied upon by the trial court. Before an extra judicial confession is relied on, it must be clear and unequivocal. The alleged confession shall be read as a whole and not to be dissected or bifurcated to the advantage of either party.

Similarly extra judicial confession is made to a person closely acquainted with the accused or to a person having status in a society who could be helpful to the accused. The said confession is often made to a person whom the accused thinks to be friend, philosopher or guide.'

38. Learned counsel has also relied upon a decision of the apex Court in *Kailash v. State of U.P.* (10), wherein the accused confessed his guilt after 20 days of the crime. The extra judicial confession was one of the strongest circumstances out of 4 circumstances. Their Lordships of the Supreme Court held that this circumstance is of doubtful nature and if this circumstance is not to be taken into consideration then on the basis of other circumstances even if they are accepted, the case against the accused does not stand established.

39. On the above strength, learned counsel argued that in the case at hand the extra judicial confession was neither made to the person in whom the accused reposed confidence nor it was voluntary nor the witnesses of the confession have made similar statements using exact words of the confession and therefore, this important circumstance being of doubtful nature and if it is taken out of consideration, the conviction of the appellant cannot be sustained even if other circumstances stand proved.

40. We have considered the above argument. We have already observed in the earlier part of the judgment that discrepancies in the statements of witnesses to the confession pointed out by the counsel for the appellants are of minor nature and are not of such nature which could adversely affect the prosecution case. As regards the extra judicial confession made before the strangers, we may refer the recent decision of the Apex Court in *State of Karnataka v. N.N. Ramdas* (11). In this case, their Lordships after referring the principles laid down in earlier decisions, namely *Rahim Beg v. State of U.P.* (12), *Gura Singh v. State of Rajasthan* (supra), *Bahadur Singh v. State of V.P.* (supra), *Maghar Singh v. State of Punjab* (supra) and *Narayan Singh v. State of M.P.* (supra), have held that extra judicial confession made before a stranger (PW 2), though unnatural, can be relied upon. Their Lordships held as under:

'Examined in the light of the enenciation of law as above, we are of the view that the testimony of PW 2 as regards the confession made by the accused at the earliest point of time is such as to inspire confidence in the mind of the court. PW 2 may be a stranger to the accused but it should also be noted that there is absolutely no reason why he should unnecessarily implicate the accused. Without any loss of time he brought to the notice of PW 3 and the police the factum of confession made by the accused soon after the crime. His version in this regard is supported by PW 3 who, being the father of the proprietor of the lodge, came to the lodge immediately after receiving the phone call from PW 2. The conduct of the accused in committing the murder and immediately revealing this fact to a stranger like PW 2 may not be consistent with ordinary human conduct. It may be difficult to speculate as to what prompted the accused to confess the commission of the crime before PW 2 and to remain in the lodge after the incident. But, on that account, there need not be astute reluctance on the part of the Court to accept the extra judicial confession. The unnatural conduct on the part of the accused will not necessarily shake the veracity of PW 2's testimony but it will put the court on guard to get the assurance of truth in the prosecution case by corroborative evidence including circumstantial factor. We have before the evidence of PW 3 who corroborates the version of PW 2 and both these witnesses have no reason to falsely implicate the accused. That apart, the circumstances referred to by the trial court are almost clinching and lead assurance to the correctness of the version of PW-2.'

41. From the evidence on record, it appears that witnesses Sagar Ahmed and accused Sarifullah belonged to the same family. The circumstances, in which the appellants confessed their guilt is also suggestive of the fact that their confession was voluntary, not obtained by coercion, inducement or promise of favour. When the explanation of the appellants about whereabouts of deceased Basir was found false and presence of Basir could not be detected at Agra, the appellants had no option but to disclose the truth before the relatives, may be in the hope of help, protection or out of repentance. Having scanned the prosecution evidence, it appears to us that the prosecution witnesses had no reason to falsely implicate the appellants, inasmuch as, firstly the witnesses to the confession have stated that they proceeded to Mahuwa to find out the truth after the accused confessed;

secondly, there is no evidence to suggest that the witnesses had the information from any other source about the dead body lying at Mahuwa; thirdly, having identified the body as that of Basir, the father of the deceased narrated the fact of confession of the accused in the report, Ex.D2, frothily; corroboration by medical evidence as incised wound was found on the dead body and knife stained with blood was recovered at the instance and on the information of accused Sarifullah, and as regards rest of the injuries, the doctor opined that these injuries could be the result overriding of truck on the body and, Fifthly; the prosecution witnesses as regards confession belonged to one family and there appears to be no reason for false implication of the accused at their instance and the circumstances in which the accused confessed appear to be natural. In this view of the matter, we are of the considered view that the circumstances referred to above are almost clinching and lend assurance to the correctness of the version of prosecution witnesses.

42. In a case of circumstantial evidence it is well settled that the circumstances from which conclusion of guilt is to be drawn should be fully established and the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one to be proved. Over all, the chain of evidence must be 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.

43. From the discussion made above, it can be inferred that the circumstances relied upon by the prosecution unerringly point towards the guilt of the accused. The prosecution has been able to prove all the five circumstances against the appellants. In our considered view the circumstances relied upon are sufficient to lead to the only conclusion that the accused appellants are the perpetrator of crime in question.

44. Resultantly, the appeals fail and are hereby dismissed. The conviction of appellants under Section 302 IPC and the sentence awarded thereunder by the trial court stands confirmed. The accused appellant Inam is on bail. His bail bonds stand cancelled. Appellant Inam is directed to surrender himself before the trial

court to serve out' the remaining part of sentence. In case of failure on the part of appellant Inam to surrender himself before the trial court, the trial court shall take necessary steps in accordance with law to ensure that appellant Inam is sent to jail for serving out the remaining part of the sentence.

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