

PRITINDER SINGH @ LOVELY

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v.

THE STATE OF PUNJAB

(Criminal Appeal No. 1635 of 2010)

JULY 05, 2023

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[B. R. GAVAI AND SANJAY KAROL, JJ.]

Evidence – Circumstantial evidence – As per the prosecution, two days prior to the date of the incident, a dispute allegedly arose between the deceased-complainant's brother and their step mother wherein she allegedly threatened the deceased that he would not survive – Two days after, the appellants (the step mother along with the co-accused) came in a car and took the deceased on the pretext of purchasing shoes, when the complainant was also present in the house and allegedly noticed that the step mother was carrying her 12 bore double barrel licensed gun in the car – Later, dead body of the deceased was found bearing two gunshot wounds – The car in which the appellants and the deceased were travelling was also found with the gun kept inside, along with the cartridges – Appellants were convicted u/s.302 r/w s.34, IPC and sentenced to life imprisonment – Correctness of – Held: The present is a case based on circumstantial evidence – In view of the serious doubt with regard to the credibility of the witnesses on the issue of extra-judicial confession and last seen theory, the failure to examine Ballistic Expert would be a glaring defect in the prosecution case – Prosecution failed to prove the case beyond reasonable doubt – Appellants entitled to benefit of doubt – Judgment of the High Court and the Trial Court quashed and set aside – Penal Code, 1860 – s.302 r/w s.34.

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Criminal Law – Law with respect to conviction in the case of circumstantial evidence – Discussed.

Evidence – Circumstantial evidence – Law of extra-judicial confession – Discussed.

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Allowing the appeals, the Court

HELD: 1.1 The prosecution case mainly rests on the testimony of (PW-2), ex-Sarpanch of village Maluka insofar as

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A extra-judicial confession is concerned. Insofar as the last seen theory is concerned, the prosecution relies on the evidence of complainant TS(PW-3), step-son of appellant MK and the statement of JS (PW9). The evidence of Dr. RKG (PW-5), Medical Expert who has conducted the autopsy and SI AS (PW-11) would also be relevant. From the evidence of PW-2, it cannot be said that the extra-judicial confession is one which could be found to be credible. There appears to be no reason as to why the accused persons would go 100 kms. away and confess to him. Apart from that, his conduct also appears to be unnatural. Though IO AS (PW-11) was known to him and the telephone which was installed in his house was in a working condition, he did not find it necessary to inform him through telephone. The courts below have erred in relying on the extra-judicial confession made to PW-2. [Paras 9 and 13][1040-G-H; 1044-E-G]

1.2 With respect to another circumstantial evidence, i.e. the accused was last seen in the company of the deceased and the deceased was found dead shortly thereafter, the prosecution relies on the evidence of complainant TS (PW-3) and JS (PW-9). It appears to be improbable that, when appellant MK had herself threatened the deceased that he would no longer be alive, a real brother (PW-3) would permit the deceased to accompany her and another accused and, that too, when the accused was carrying a gun with her. Though PW-9 has stated that on 03.09.1998, accused MK had exhorted co-accused PS that RS was alone and he should be done away with, when the death of the deceased had occurred on the very next day, he did not find it necessary to inform anyone about it, including the police, till he was summoned to the Police Station on 10.09.1998. [Paras 14, 16 and 19][1044-G-H; 1045-G-H; 1046-D-E]

1.3 Though the dead body of the deceased was found on 4th September 1998, the statement of MS (PW-2) to whom the alleged extra-judicial confession was made, was recorded on 9th September 1998. SI AS (PW-11) has admitted in his examination that MS (PW-2) was known to him. He has further stated that he did not know in how many cases of his Police Station MS was cited as witness. It is further to be noted that the statement of JS (PW-9) was recorded on 10th September 1998. As (PW-11) has

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also admitted in his evidence that though the father of RS was alive in those days, he did not record his statement by visiting his village. PW-11 further admitted that he also did not visit the house of the deceased RS to collect any evidence of motive or him leaving his house before the occurrence. The conviction on the basis of such evidence cannot be sustained. Apart from that, it is to be noted that even according to PW-11, the gun which was recovered from the car had two empty cartridges (Ex. P10 and P11). Furthermore, the evidence of Dr. RKG (PW-5), who had conducted the post-mortem of the deceased, would show that there was no external exit wound, and wad and pellets were preserved and sealed. Apart from not collecting any evidence as to whether the said gun belonged to the appellant MK, even the Ballistic Expert has not been examined to show that the wad and pellets were fired from the empty cartridges (Ex. P10 and P11). [Paras 20, 21 and 22][1046-E-H; 1047-A-C]

1.4 The present case is a case based on circumstantial evidence. In view of the serious doubt with regard to the credibility of the witnesses on the issue of extra-judicial confession and last seen theory, the failure to examine Ballistic Expert would be a glaring defect in the prosecution case. The prosecution has failed to prove the case beyond reasonable doubt and, as such, the accused are entitled to benefit of doubt. The impugned judgment and order of the High Court and the judgment of the Trial Court are quashed and set aside. [Paras 25-27][1047-F-G; 1048-A-B]

Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 : [1985] 1 SCR 88; *Munna Kumar Upadhyay alias Munna Upadhyaya v. State of Andhra Pradesh through Public Prosecutor, Hyderabad, Andhra Pradesh* (2012) 6 SCC 174 : [2012] 6 SCR 611 – relied on.

Sukhwant Singh v. State of Punjab (1995) 3 SCC 367 : [1995] 2 SCR 1190; *Gulab v. State of Uttar Pradesh* (2022) 12 SCC 677; *Gurucharan Singh v. State of Punjab* [1963] 3 SCR 585; *State of Punjab v. Jugraj Singh* (2002) 3 SCC 234 : [2002] 1 SCR 998 – referred to.

A	<u>Case Law Reference</u>		
	[1985] 1 SCR 88	relied on	Para 5
	[2012] 6 SCR 611	relied on	Para 12
	[1995] 2 SCR 1190	referred to	Para 23
B	(2022) 12 SCC 677	referred to	Para 24
	[1963] 3 SCR 585	referred to	Para 24
	[2002] 1 SCR 998	referred to	Para 24

C CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1635 of 2010.

From the Judgment and Order dated 04.02.2010 of the High Court of Punjab & Haryana at Chandigarh in CRLA No. 430 of 2001.

With

D Criminal Appeal No.1714 of 2010.

Keshavam Chaudhri, Rishi Sehgal, Ms. Arveen Sekhon, Ms. Prabhneer Swani, Ms. Hargun Sandhu, Digvijay Singh, Kunal Sharma, Nikhil Jain, Ms. Jaspreet Gogia, Ms. Christi Jain, Advs. for the Appellant.

E Abhinav Bajaj, Ajay Pal, Mayank Dahiya, Ms. Sugandh Rathor, Advs. for the Respondent.

The Judgment of the Court was delivered by

B. R. GAVAI, J.

F 1. These appeals challenge the judgment and order of the High Court of Punjab and Haryana, dated 4th February 2010, in Criminal Appeal No. 430-DB of 2001, upholding the conviction and sentence imposed upon the accused – appellants herein by the Additional Sessions Judge, Bathinda (hereinafter referred to as “Trial Court”), for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”).

G 2. The case of the prosecution in brief is as follows:-

H 2.1 One Harbhajan Singh, a resident of Naga Mahantanwala Dera, had solemnized two marriages, the first with one Sukhwinder Kaur and the second with the accused Manjit Kaur. His first wife bore him four children, complainant Tapinder Singh, deceased Ravinder Singh, and two

daughters, both of whom are married. His second wife also bore him two children, namely Navdeep Kaur and Jaswinder Kaur. A

2.2 Harbhajan Singh, according to the complainant, had a strained relationship with his first wife. The complainant Tapinder Singh had migrated to the United States of America in the year 1990, and his mother Sukhwinder Kaur had also followed him in the year 1994. It is pertinent to note that his brother Ravinder Singh remained in India, residing in village Jawadi close to Naga Mahantanwala Dera, where his father Harbhajan Singh was residing with his step mother, accused Manjit Kaur. B

2.3 A year and a half prior to the occurrence of the incident, Tapinder Singh had returned to the village. It is alleged by him that two days prior to the date of the incident, i.e. on 1st September 1998, a dispute arose between Ravinder Singh and Manjit Kaur, on account of her allegedly deficient moral character. Ravinder Singh had beaten Manjit Kaur during this incident, whereafter Manjit Kaur had allegedly threatened Ravinder Singh that he would not survive. C

2.4 Two days later, i.e. on 3rd September 1998, accused Manjit Kaur along with one Pritinder Singh, alias Lovely, accused - appellant herein, came in a car bearing Registration No. HR 21 7778 and took Ravinder Singh in the said car on the pretext of purchasing shoes. Pertinently, Tapinder Singh was also present in the house at this time and allegedly noticed that accused Manjit Kaur was carrying her 12 bore double barrel licensed gun in the car. D E

2.5 When the deceased Ravinder Singh did not return that evening, suspicion arose in the mind of Tapinder Singh and on the very next day, he along with one Gurdeep Singh, son of Gurmit Singh, went to Naga Mahantanwala Dera in search of the deceased. The Mahant of the Dera told them that the three individuals, i.e. two accused and the deceased, had come in a car the previous night at around 9:30 PM. While both the appellants had their meals, Ravinder did not. The Mahant also informed Tapinder Singh that Ravinder Singh and Manjit Kaur were arguing with each other and, while leaving, had mentioned that they were going to the house of one Surjit Singh, resident of village Kotha Guru, in their car. F G

2.6 Thereafter, Tapinder Singh set out for Surjit Singh's house and reached the bridge of the minor canal on the way to Kotha Guru at about 8:30 AM, where they found the dead body of the deceased Ravinder H

A Singh, lying on the pavement of the canal. The body bore two gunshot wounds. The car in which the appellants and the deceased were travelling was also standing there, with the aforementioned gun kept inside, along with the cartridges. On the same day at around 10:15 AM, a complaint was filed on the basis of which an FIR was registered at 11:00 AM and an inquest report was prepared. A special report was subsequently received by the Magistrate on the same day at 2:15 PM. On the very same day, both the accused-appellants herein were apprehended and arrested and subjected to medical examination by the Medical Officer of Primary Health Center Bhagta Bhai Ke at 8:45 PM.

C 2.7 The postmortem report stated the cause of death to be shock, haemorrhage and injury to vital organs, with the two wounds confirmed to be caused by a fire arm. The report of the Forensic Science Laboratory further stated that, of the two cartridges found in the car, one had been shot from the right barrel of the 12 bore double barrel licenced gun, while the other had been shot from the left barrel of the same weapon.

D 2.8 On completion of the investigation, a chargesheet was filed before the Judicial Magistrate Ist Class, Phul, who, vide order dated 21st December 1998, committed the case to the Trial Court. The Trial Court framed charges against the two accused - appellants herein.

E 2.9 At the conclusion of the trial, relying on the last seen theory, the chain of circumstantial evidence being complete, and the extra-judicial confession made by the accused – appellants herein that they had killed deceased Ravinder Singh before PW-2 – Mal Singh, the Ex-Sarpanch of village Maluka, the Trial Court, vide judgment and order dated 10th July 2001, convicted the two accused – appellants herein, under Section 302 read with Section 34 of the IPC and sentenced them to undergo life imprisonment with a fine of Rs. 1000/- payable by each accused.

G 2.10 Appeals were preferred by both the accused - appellants herein before the High Court in Criminal Appeal No. 430-DB of 2001, challenging their conviction and sentence. A revision application, being Criminal Revision No. 347 of 2002, was also filed, by the complainant Tapinder Singh, seeking enhancement of sentence awarded by the Trial Court. Both the Criminal Appeal and the Revision Application were dismissed by the High Court vide the impugned judgment and order dated 4th February 2010, thereby affirming the conviction and sentence imposed upon the accused - appellants herein by the Trial Court.

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3. Hence the present appeals. A

4. We have heard Mr. Keshavam Chaudhri and Ms. Jaspreet Gogia, learned counsel appearing for the appellants and Mr. Abhinav Bajaj, learned counsel appearing for the respondent.

5. Undisputedly, the present case is a case which rests on circumstantial evidence. The law with regard to conviction in the case of circumstantial evidence is very well crystalised in the case of *Sharad Birdhichand Sarda v. State of Maharashtra*¹. B

6. We may gainfully refer to the following observations of this Court in the case of *Sharad Birdhichand Sarda* (supra): C

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. D

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrLJ 1783] where the observations were made: [SCC para 19, p. 807; SCC (Cri) p. 1047] E

“Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.” F

(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, G

(3) the circumstances should be of a conclusive nature and tendency,

¹ (1984) 4 SCC 116

A (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

B probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

C 7. It can thus be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned “must or should” and not “may be” established. It has been held that there is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved”. It has been held that the

D 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. It has been held that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so as

E 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.

8. It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. In the

F light of these guiding principles, we will have to consider the present case.

9. The prosecution case mainly rests on the testimony of Mal Singh (PW-2), ex-Sarpanch of village Maluka insofar as extra-judicial confession is concerned. Insofar as the last seen theory is concerned,

G the prosecution relies on the evidence of complainant Tapinder Singh (PW-3), step-son of appellant Manjit Kaur and the statement of Jagtar Singh (PW-9). The evidence of Dr. Rakesh Kumar Goel (PW-5), Medical Expert who has conducted the autopsy and SI Amritpal Singh (PW-11) would also be relevant.

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10. Mal Singh (PW-2), ex-Sarpanch of village Maluka has stated that on 4th September 1998, appellants Manjit Kaur and Pritinder Singh @ Lovely had come to him in his village. He stated that both were nervous at that time. He further stated that appellant Manjit Kaur took him on one side and told him that Ravinder Singh, son of Harbhajan Singh was killed by them as he suspected that she was carrying on illicit relations with persons who used to come to her.

11. It is relevant to note that the village Jawadi where PW-2 resides is 100 kms. away from the village of the appellants and deceased. It is further to be noted that his evidence is full of omissions and contradictions. Apart from that, he has admitted in this evidence that the IO Amritpal Singh (PW-11) was known to him for the last 4-5 years. In his evidence, PW-2 has clearly admitted that though he had a telephone in his house which was in a working condition, he neither informed the family members of the deceased nor the police about the said extra-judicial confession. PW-2 further admitted that he did not convey any information of the said extra-judicial confession to the SHO, though he was known to him. PW-2 further admitted that one Mr. Gurcharan Singh was the Sarpanch of his village in those days. However, he did not ask the appellants to go and meet him.

12. The law with regard to extra-judicial confession has been succinctly discussed in the case of *Munna Kumar Upadhyay alias Munna Upadhyaya v. State of Andhra Pradesh through Public Prosecutor, Hyderabad, Andhra Pradesh*², wherein this Court has also referred to its earlier judgments, which read thus:

“56. This Court has had the occasion to discuss the effect of extra-judicial confessions in a number of decisions. In *Balwinder Singh v. State of Punjab* [1995 Supp (4) SCC 259 : 1996 SCC (Cri) 59] this Court stated the principle that: (SCC p. 265, para 10)

“10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.”

² (2012) 6 SCC 174

- A **57.** In *Pakkirisamy v. State of T.N.* [(1997) 8 SCC 158 : 1997 SCC (Cri) 1249] the Court held that: (SCC p. 162, para 8)
- “8. ... It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.”
- B **58.** Again, in *Kavita v. State of T.N.* [(1998) 6 SCC 108 : 1998 SCC (Cri) 1421] the Court stated the dictum that: (SCC p. 109, para 4)
- C “4. There is no doubt that convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made.”
- D **59.** While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in *State of Rajasthan v. Raja Ram* [(2003) 8 SCC 180 : 2003 SCC (Cri) 1965] stated the principle that: (SCC p. 192, para 19)
- E “19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.”
- F The Court further expressed the view that: (SCC p. 192, para 19)
- G “19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused....”
- H **60.** In *Aloke Nath Dutta v. State of W.B.* [(2007) 12 SCC 230 : (2008) 2 SCC (Cri) 264], the Court, while holding that reliance on extra-judicial confession by the lower courts in absence of other

corroborating material, was unjustified, observed: (SCC pp. 265- A
66, paras 87 & 89)

“87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. B
It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.

89. A detailed confession which would otherwise be within C
the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof.”

61. Accepting the admissibility of the extra-judicial confession, D
the Court in *Sansar Chand v. State of Rajasthan* [(2010) 10 SCC 604 : (2011) 1 SCC (Cri) 79] held that: (SCC p. 611, paras 29-30)

“29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide *Thimma and Thimma Raju v. State of Mysore* [(1970) 2 SCC 105 : 1970 SCC (Cri) 320] , *Mulk Raj v. State of U.P.* [AIR 1959 SC 902 : 1959 Cri LJ 1219], *Sivakumar v. State* [(2006) 1 SCC 714 : (2006) 1 SCC (Cri) 470] (SCC paras 40 and 41), *Shiva Karam Payaswami Tewari v. State of Maharashtra* [(2009) 11 SCC 262 : (2009) 3 SCC (Cri) 1320] and *Mohd. Azad v. State of W.B.* [(2008) 15 SCC 449 : (2009) 3 SCC (Cri) 1082]] E
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30. In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate G
and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872.” H

- A **62.** Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in *Rameshbhai Chandubhai Rathod v. State of Gujarat* [(2009) 5 SCC 740 : (2009) 2 SCC (Cri) 881] held as under: (SCC pp. 772-73, para 53)
- B “53. It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless, the
- C court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.”
- D **63.** Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [Ref. *Sk. Yusuf v. State of W.B.* [(2011) 11 SCC 754 : (2011) 3 SCC (Cri) 620] (SCC pp. 762-63, para 28) and *Pancho v. State of Haryana* [(2011) 10 SCC 165 : (2012) 1 SCC (Cri) 223] .]”
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- F 13. From the evidence of PW-2, we find that it cannot be said that the extra-judicial confession is one which could be found to be credible. There appears to be no reason as to why the accused persons would go 100 kms. away and confess to him. Apart from that, his conduct also appears to be unnatural. Though IO Amritpal Singh (PW-11) was known to him and the telephone which was installed in his house was in a working condition, he did not find it necessary to inform him through telephone. We are, therefore, of the considered view that the courts below have erred in relying on the extra-judicial confession made to PW-2.
- G 14. That leaves with us another circumstantial evidence, i.e. the accused was last seen in the company of the deceased and the deceased was found dead shortly thereafter. In this respect, the prosecution relies on the evidence of complainant Tapinder Singh (PW-3) and Jagtar Singh (PW-9). PW-3 is the step-son of appellant Manjit Kaur. He has himself
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admitted in his evidence that the relations between him and appellant A
Manjit Kaur were strained. As per his version, there used to be a quarrel
between Ravinder Singh and appellant Manjit Kaur. He has stated that
Ravinder Singh used to give beatings to Manjit Kaur. He has further
stated in his evidence that Manjit Kaur had told his brother that, “he has
not done good thing to her and that he will not survive any longer.” In the B
background of this version, his statement that on 3rd September 1998,
when he was present in his house, appellant Pritinder Singh came in a
car and took his brother Ravinder Singh along with Manjit Kaur on the
pretext of going to Bhagta to purchase shoes appears to be improbable.
It is his further version that appellant Manjit Kaur also took her gun with C
her.

15. He stated that since they did not return, it raised a suspicion in
his mind. He, therefore, along with Gurdeep Singh, went in search of the
deceased Ravinder Singh. They went to the Dera at village Maluka
where the Mahant of the Dera told them that Manjit Kaur and Pritinder
Singh had come there at around 09.30 PM. Thereafter, he stated that D
the Mahant told them that the appellants and the deceased had left the
Dera saying that they had to go to the house of Surjit Singh. Then the
complainant and Gurdeep Singh started for the house of Surjit Singh
and, when they reached the bridge of the minor canal at about 08.30
AM, they saw the dead body of his brother on the pavement of the E
minor canal. He further stated that the body of his brother bore two gun-
shots. The car was also standing there. The gun was lying in the car
along with a belt containing 7 cartridges. Thereafter, when he and
Gurdeep Singh were going to the Police Station to lodge the report, they
found a police party led by SI Amritpal Singh (PW-11) near the bus
stand of V. Guruka Kotha, to whom he narrated the entire incident to, F
then and there. As already stated hereinabove, the relations between
the appellant Manjit Kaur and this witness are strained. As such, the
testimony of this witness, being an interested witness, will have to be
scrutinized with greater caution and circumspection.

16. It appears to be improbable that, when appellant Manjit Kaur G
had herself threatened the deceased that he would no longer be alive, a
real brother would permit the deceased to accompany her and another
accused and, that too, when the accused was carrying a gun with her.
We find that the evidence of this witness will have to be taken with a
pinch of salt.

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A 17. Another witness supposedly giving credence to the last seen theory is Jagtar Singh (PW-9), son of Jagrup Singh. According to this witness, on 3rd September 1998, the accused along with deceased Ravinder Singh had come to the Dera when he had gone to visit there. He stated that when Ravinder Singh went to urinate, Manjit Kaur exhorted co-accused Pritinder Singh by saying that Ravinder Singh was alone and he should be done away with. PW-9 stated that, thereafter, the accused took meals in the Lungar there and went out.

B 18. The cross-examination of PW-9 shows that, though the incident occurred on 3rd September 1998, his statement was recorded on 10th September 1998. His evidence is full of contradictions and omissions. C The admission in the cross-examination itself speaks volumes of his high credentials. He has admitted that he, along with other accused, had been convicted for the offence under Section 307 of the IPC and had been sentenced to life imprisonment by the trial court, but had, however, been acquitted by the High Court. He has further admitted that he had remained in jail for about 4 years in the murder case of one Gursewak Singh. D

19. Though PW-9 has stated that on 3rd September 1998, accused Manjit Kaur had exhorted co-accused Pritinder Singh that Ravinder Singh was alone and he should be done away with, when the death of the deceased had occurred on the very next day, he did not find it necessary to inform anyone about it, including the police, till he was summoned to the Police Station on 10th September 1998. E

20. It is to be noted that though the dead body of the deceased was found on 4th September 1998, the statement of Mal Singh (PW-2) to whom the alleged extra-judicial confession was made, was recorded on 9th September 1998. SI Amritpal Singh (PW-11) has admitted in his examination that Mal Singh (PW-2) was known to him. He has further stated that he did not know in how many cases of his Police Station Mal Singh was cited as witness. It is further to be noted that the statement of Jagtar Singh (PW-9), as already stated hereinabove, was recorded on 10th September 1998. F

G 21. Amritpal Singh (PW-11) has also admitted in his evidence that though the father of Ravinder Singh was alive in those days, he did not record his statement by visiting his village. PW-11 further admitted that he also did not visit the house of the deceased Ravinder Singh to collect any evidence of motive or him leaving his house before the occurrence. H

22. We find that the conviction on the basis of such evidence cannot be sustained. Apart from that, it is to be noted that even according to PW-11, the gun which was recovered from the car had two empty cartridges (Ex. P10 and P11). Furthermore, the evidence of Dr. Rakesh Kumar Goel (PW-5), who had conducted the post-mortem of the deceased, would show that there was no external exit wound, and wad and pellets were preserved and sealed. It is to be noted that apart from not collecting any evidence as to whether the said gun belonged to the appellant Manjit Kaur, even the Ballistic Expert has not been examined to show that the wad and pellets were fired from the empty cartridges (Ex. P10 and P11).

23. It will be relevant to refer to the following observations of this Court in the case of *Sukhwant Singh v. State of Punjab*³:

“21.It hardly needs to be emphasised that in cases where injuries are caused by firearms, the opinion of the ballistic expert is of a considerable importance where both the firearm and the crime cartridge are recovered during the investigation to connect an accused with the crime. Failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent.”

24. No doubt that this case has been recently distinguished by a three-Judges Bench of this Court in the case of *Gulab v. State of Uttar Pradesh*⁴, relying on the earlier judgments of this Court in the cases of *Gurucharan Singh v. State of Punjab*⁵ and *State of Punjab v. Jugraj Singh*⁶.

25. However, it is to be noted that the case of *Jugraj Singh* (supra) was a case of direct evidence, where there was evidence of two eye-witnesses. The present case is a case based on circumstantial evidence. In view of the serious doubt with regard to the credibility of the witnesses on the issue of extra-judicial confession and last seen theory, the failure to examine Ballistic Expert would, in our opinion, be a glaring defect in the prosecution case. We are, therefore, of the considered view that the prosecution has failed to prove the case beyond

³ (1995) 3 SCC 367

⁴ (2022) 12 SCC 677

⁵ [1963] 3 SCR 585

⁶ (2002) 3 SCC 234

A reasonable doubt and, as such, the accused are entitled to benefit of doubt.

26. In the result, the appeals are allowed. The impugned judgment and order of the High Court dated 4th February 2010 and the judgment of the Trial Court dated 10th July 2001 are quashed and set aside.

B 27. The bail bonds of the appellants shall stand discharged. Pending application(s), if any, shall stand disposed.

Divya Pandey
(Assisted by : Roopanshi Virang, LCRA)

Appeals allowed.