**SUPREME COURT OF INDIA**

Chattar Singh

Vs

State of Haryana

Criminal Appeal No. 180 of 2001

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma)

26/08/2008

**JUDGMENT**

**Dr. ARIJIT PASAYAT, J.**

1. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court upholding the conviction of appellant No.1-Chattar Singh (hereinafter referred to as `A-1') for offence punishable under Section 302 of the Indian Penal Code, 1860. He was also convicted for offence punishable under Section 201 and Section 498A IPC. Different sentences were imposed for the said offences. Appellant-Mange Ram (hereinafter referred to as `A-2') was convicted for offence punishable under Section 498A IPC and was sentenced to undergo RI for two years and to pay a fine of Rs.2, 000/-. The conviction recorded by learned Additional Sessions Judge, Rohtak, was confirmed by Division Bench of the High Court as also the sentences for both the appellants.

2. Background facts giving rise to the prosecution are as follows:

A young girl, namely, Guddi (hereinafter referred to as the `deceased') aged about 26 years, belonged to village Nimly in district Bhiwani in Haryana. Her marriage was performed with Chattar Singh, A-1, son of Mange Ram, A-2 of village Sahlawas, in district Rohtak, in the year 1990. Both the families are agriculturists. A daughter, namely, Poonam (deceased no.2) was born from this wedlock. Dead bodies of Guddi and that of the infant daughter Poonam in the posture that the latter was in the armpit of Guddi were found in a well of village Sahalwas on the morning of 17.2.1993. Jeet Singh, father of the deceased made an application Ex.PO on 16.2.1993, a day earlier that his daughter was missing, before SI Ashok Kumar, PW-12, the then Station House Officer, Police Station, Sahlawas and on its basis formal FIR Ex.PN was recorded. On 17.2.1993 he inspected the spot and prepared rough site plan Ex.PCC. He got the dead bodies of the deceased photographed by Varinder Singh, Photographer, and PW.14. Ex.PJJ/l to 8 is the photographs and Ex.PJJ/9 to 14 and Ex.PZ/7 and 8 are their negatives. Zile Singh, PW.9, also took photographs Ex.PZ/7 to 12 and the negatives are Ex.PZ/1 to 6. The Investigating Officer prepared inquest reports Ex.PB and PD. He also prepared rough site plan of the place of recovery of dead bodies Ex.PDD. The dead bodies were taken out from the well and were dispatched for post mortem. On 28.2.1993, Chattar Singh and Mange Ram accused were produced by Babu Lal, Sarpanch of the village before the Investigating officer who were arrested. On interrogation by the Investigating Officer on 1.3.1993, Chattar Singh accused made a disclosure statement Ex.PFF and in pursuance thereof got recovered Chuni (Scarf) from the specified place which were taken into possession vide memo Ex.PFF/1. He also prepared rough site plan Ex.PFF/2 of the place of recovery. However, the statement made by Jeet Singh, PW.3, the father of the deceased contained the allegations that Chattar Singh (husband) and Mange Ram (father-in-law) of the deceased as well as Rajesh and Vijay Singh along with their wives Bimla and Bala respectively who were maltreating his daughter were demanding Rs.50,000/- as a part of dowry and only on fulfilment of that condition the daughter could remain in peace. He allegedly borrowed a sum of Rs.50,000/- from one Badan Singh, PW.8, and paid the amount to the accused persons. He also claimed that he gave various other amounts, valuables and articles on various occasions and it was, therefore, that since this amount was given at least 25 days earlier to the occurrence, after the birth of the child when Guddi had stayed only for a short period prior to the occurrence at the place of her in-laws. So, there was one version of the complainant, father of the deceased, that the dispute which led to the death of the deceased was the demand of dowry. However, during further investigation of the case, it transpired that extra judicial confession was allegedly made by Chattar Singh and Mange Ram accused that they were suspecting illicit relation of the deceased Guddi with some person and that she had conceived a child from that person and the child was delivered at her parents' place. Therefore, on account of that stigma being cast on the family of the accused, they did not think that it was befitting their prestige that Guddi should be allowed to stay with them and they have done her and the infant child to death and asked the Sarpanch Babu Lal to help them in the matter. A similar extra judicial confession was allegedly made before Dial Singh, PW.5, Om Singh, PW.6 and Ms.Viney Bhardwaj, P.W.10, a Reader in the Department of History who was the Secretary of one Mahila Dakshita Samiti and the Samiti had approached the accused persons in the village where Mange Ram made an extra judicial confession that his son Chattar Singh had done the deceased to death, because of infidelity of the deceased.

The post-mortem on the dead body of Guddi was performed by Dr. Vijay Pal Khanagwal, PW.1, on 19.2.1993 at 9.00 A.M. and he found the following injuries on the dead body:

1) There was a contusion present over the tip and alae of nose, 3 cm in diameter. On dissection the sub cutaneous and deeper structures showed acchymosed.

2) There were multiple contusions present over both the lips and in an area of 3 to 4 cms around the lips. Size varying from 1 x 0.5 to 2.5 x 1.5 cm. On dissection, the underlying tissues were ecchymosed.

3) A contusion present over right side of face 1 cm from mid line, situated 2 cm above lower border of mendible measuring 3.2 cm placed transversely. On dissection, the deeper tissues showed ecchymosis.

In the opinion of the doctor the dead body was in moderate stage of decomposition and that the cause of death was smothering.

On the same day at 11.00 A.M. the aforesaid doctor conducted post mortem on the dead body of infant child Poonam and he found the following injuries on the dead body:

1) There was a contusion over the nose along its tip and alae measuring 3 x 2 cm in size. On dissection the underlying tissues showed ecchymosis.

2) There were multiple contusion present over the lips, chin and the area around it in an area of 4 x 5 cms size varying from 1 x 0.5 cm to 2 x 1 cm. On dissection the sub cutaneous and deeper structure was ecchymosed.

In the opinion of the doctor the dead body was in moderate stage of decomposition and the cause of death was smothering. Clothes of the deceased were sent to the Forensic Science Laboratory and they were found to be stained with human blood as per report Ex.PQ/1.

Investigation was conducted by Inspector Sumer Singh Malik, PW.13 who recorded the statements of Raghbir Singh, Ramesh and one more witness on 5.4.1993. As per order of Shri R.S. Yadav, Additional Superintendent of Police, who supervised the investigation, he arrested Mange Ram, Chattar Singh and Bhalliyan, accused. On completion of investigation, charge sheet was filed.

It is to be noted that Jeet Singh (PW-3), father of the deceased had brought a private complaint in which he had named seven accused persons. The police presented challan against two persons i.e. the present appellants and the names of rest of the accused persons were kept in column No. II. However, the trial Court ordered challan of the complaint to be amalgamated and, therefore, all the seven persons were tried. But the trial Court directed acquittal of five co-accused persons while finding the appellants guilty.

The trial Court found that the prosecution case rested on circumstantial evidence. Two of the major circumstances were the alleged extra judicial confession and that the accused and the deceased were last seen together. The trial Court found the prosecution version to be cogent and credible. It is to be noted that 14 witnesses were examined to further the prosecution version. The complainant was examined as PW-3. The present appellants pleaded innocence though they admitted relationship inter se with the deceased Guddi and the factum that she has delivered a child. Though a plea was taken that the deceased had accidentally fallen in the well or had committed suicide, the same was discarded. The trial Court primarily relied on the evidence of Dr. Vijay Pal Kangwal to rule out the death by drowning and that death had occurred earlier and dead bodies were thrown in the well. According to him, death was caused by closing the nostrils and mouth of the deceased with hands or other means. Accordingly, the convictions were recorded and sentences were imposed.

3. The primary stand in appeal was that the circumstances do not present a complete chain. The High Court noted that the trial Judge believed the evidence of extra judicial confession against appellant No.1 that he had smothered his wife and child and managed to throw the dead bodies in the well and came to the conclusion that he alongwith father Mange Ram also maltreated and harassed the deceased with cruelty. The trial Judge had, therefore, rightly recorded conviction. It was also averred before the High Court that Guddi was missing from the house since morning of 16.2.1993 and on making report to that effect, her dead body alongwith the dead body of child were found in the well. It was also submitted that it was not a case of smothering and death was due to asphyxia as stated by PW-1, the doctor and the injury on the person of the deceased could be the result of the deceased having fallen in the well. The version of the accused persons that the deceased left the house around 6.00 a.m. was also falsified by the fact that semi digested food was found in her intestine. It was also pleaded that one of the witnesses to the alleged extra judicial confession supported the case of the defence and not the prosecution. The High Court noticed that the extra judicial confession before PW-10 was most relevant. She had no animus against anyone whatsoever. The evidence of PWs 5 and 6 was also believed so far as extra judicial confession is concerned. The High Court did not find any substance in the appeal and dismissed the same.

4. The stand taken before the High Court was re-iterated by learned counsel for the appellants and the State.

5. It has been consistently laid down by this Court that where a case rests squarely on circumstantial

evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan AIR (1977 SC 1063); Eradu and Ors. v. State of Hyderabad (AIR 1956 SC 316); Earabhadrappa v. State of Karnataka (AIR 1983 SC 446); State of U.P. v. Sukhbasi and Ors.(AIR 1985 SC 1224); Balwinder Singh v. State of Punjab (AIR 1987 SC 350); Ashok Kumar Chatterjee v. State of M.P. (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

6. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC193, wherein it has been observed thus:

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

7. In Padala Veera Reddy v. State of A.P. and Ors. (AIR 1990 SC 79), it was laid down 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 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."

8. In State of U.P. v. Ashok Kumar Srivastava, (1992 Crl.LJ 1104), it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

9.Sir Alfred Wills in his admirable book "Wills' Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted".

10. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch- stone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

11. In Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh, (AIR 1952 SC 343), wherein it was observed thus:

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

12. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra, (AIR 1984 SC 1622). Therein, while dealing with circumstantial evidence, it has been

held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned `must' or `should' and not `may be' 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.

13. These aspects were highlighted in State of Rajasthan v. Raja Ram (2003 (8) SCC 180), State of Haryana v. Jagbir Singh and Anr. (2003 (11) SCC 261) and Kusuma Ankama Rao v State of A.P. (Criminal Appeal No.185/2005 disposed of on 7.7.2008)

14. So far as the last seen aspect is concerned it is necessary to take note of two decisions of this court. In State of U.P. v. Satish [2005 (3) SCC 114] it was noted as follows:

"22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is

positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2."

15. In Ramreddy Rajeshkhanna Reddy v. State of A.P. [2006 (10) SCC 172] it was noted as follows:

"27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration".

(See also Bodh Raj v. State of J&K (2002(8) SCC 45).)"

16. A similar view was also taken in Jaswant Gir v. State of Punjab [2005(12) SCC 438] and Kusuma Ankama Rao's case (supra).

17. Confessions may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a Magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or court. Extra-judicial confessions are generally those that are made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code of Criminal Procedure, 1973 (for short the `Code') or a Magistrate so empowered but receiving the confession at a stage when Section 164 of the Code does not apply. As to extra-judicial confessions, two questions arise: (i) were they made voluntarily? and (ii) are they true? As the section enacts, a confession made by an accused person is irrelevant in criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person; or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24 of the Indian Evidence Act, 1872 (in short `Evidence Act'). The law is clear that a

confession cannot be used against an accused person unless the court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the court has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the court is satisfied that in its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt. (See R. v. Warickshall) It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So where the statement is made as a result of harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of a threat, and often the inducement involves promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See Woodroffe's Evidence, 9th Edn., p. 284.) A promise is always attached to the confession alternative while a threat is always attached to the silence alternative; thus, in one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the court is to determine the absence or presence of an inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words "appear to him" in the last part of the section refer to the mentality of the accused.

18. 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. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. 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 to such a confession. 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, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

18. So far as the extra judicial confession of A-2 before PWs 5 and 6 is concerned that actually is not of much relevance in view of Section 30 of Evidence Act. The stress in the said provision is on the joint trial for the same offence. In the instant case A-2 was not tried for Section 302 IPC. Therefore, his confession if any is of no consequence. But the extra judicial confession before PW-10 which has been relied upon by both the trial Court and the High Court cannot be lost sight of.

19. In view of the evidence led, the inevitable conclusion is that the conviction recorded by the trial Court and upheld by the High Court does not suffer from any infirmity to warrant interference. However, considering the age of A-2 the sentence is reduced to the period already undergone which is nearly one year so far as A-2 is concerned. Except the modification of sentence so far as A-2 is concerned the appeal is dismissed. The bail bonds executed so far as A-2 is concerned shall stand discharged. So far as A-1 is concerned he shall surrender to custody forthwith to serve the remainder of sentence.