A TEJINDER SINGH @ KAKA

v.

STATE OF PUNJAB

(Criminal Appeal No. 1279 of 2008 etc.)

APRIL 11, 2013

B

[CHANDRAMAULI KR. PRASAD AND V. GOPALA GOWDA, JJ.]

PENAL CODE, 1860:

C

ss. 302, 376(2)(g), 201 and 506 - Gang rape and murder - Conviction by trial court - Affirmed by High Court - Held: There is major discrepancy in the testimony of witnesses and also registration of FIR on the basis of information furnished by the informant - Further, the Sarpanch to whom the accused were stated to have made confessional statement, reported the matter to police after 16 days - His evidence is not believable - The narration of the alleged offences against the appellants and other accused by prosecution witnesses is most unnatural and unbelievable to convict and sentence them - Neither trial court nor High Court has examined their testimony properly by re-appreciating the same to record findings on the charges - There is no material evidence on record to convict and sentence the appellants - Their conviction and sentences are set aside - Circumstantial evidence.

D

E

F

Extra-judicial confession - Held: Is a weak form of evidence and based on such evidence no conviction and sentence can be imposed upon the appellants and other accused.

G

CONSTITUTION OF INDIA, 1950:

Art. 142 - Benefit of acquittal extended to non-appellant-

H

accused also - Penal Code, 1860 - ss. 302, 376 (2) (g), 201, 404 and 506 IPC.

An FIR was lodged at the Police Station on 25.5.2000 for offences punishable u/s 302, 376(2)(g), 148, 201 and 404 read with s. 34 IPC, alleging that on 24.5.2000 at about 9 A.M. the deceased had gone to the fields to bring fodder and did not return. At about 8 A.M. on 25.5.2000, the body of the deceased was found buried in a fresh dug pit in the sugar cane field belonging to accused 'SL'. The trial court convicted accused 'GS' u/ss 302, 376(2)(g) and 506 IPC amd accused 'RV'. 'HS', 'BS' and SL u/ss 302, 376(2)(g) and 404 IPC. All these five accused were sentenced to imprisonment for life. Accused 'TS' was convicted u/s 201 IPC and sentenced to 7 years RI. The High Court affirmed the conviction and the sentence. Except accused 'GS', all other accused filed the appeals.

Allowing the appeals, the Court

HELD: 1.1 In so far as appellant 'TS' is concerned, the charge is u/s 201 IPC. As could be seen from the evidence of PW-8 and PW-9, there is major discrepancy between their statements of evidence. PW-8 has stated that appellant 'TS' started digging a pit with spade in the sugarcane field, whereas PW-9 has stated that the said appellant was not present at that time. In view of the major discrepancy and contradiction between the statements of the witnesses, it not only creates a grave suspicion regarding the said appellant being part of the offence but also makes his presence doubtful at the place of occurrence. Therefore, placing reliance by trial court upon the testimony of the said witnesses and recording the finding against appellant 'TS' on the charge and passing an order of conviction and sentence which is affirmed by the High Court is without proper appreciation of the major discrepancy in the statements of PWs 8 and 9 regarding the presence of appellant 'TS' at the place of

A occurrence. The courts below have also failed to take into consideration the evidence of PW-10, wherein she had deposed about the presence of other accused near the place of occurrence, but she has not named appellant 'TS. Moreover, there is nothing substantive and positive
B evidence placed on record against appellant 'TS" by the prosecution to prove its case against him. It cannot be said that the prosecution has proved its case beyond reasonable doubt. The benefit of doubt should have been extended to 'TS' in the impugned judgment by the
C High Court while re-appreciating the evidence on record in exercise of its jurisdiction. [para 18, 20 and 21] [817-D-E, F-H; 818-A-E, F-H]

Sukhram Vs. State of Maharashtra 2007 (9) SCR 44 = 2007 (7) SCC 502 - relied on.

D

1.2 Thus, this Court holds that there is major discrepancy in the testimony of witnesses PW-8 and PW-9 and also registration of FIR on the basis of information furnished by the informant. The finding of the trial court
E in this regard is erroneous in law for the reason that the evidence of PWs 8 and 9 has raised serious suspicion and doubt. Therefore, the same must be extended to the other appellants. [para 22] [820-A-C]

1.3 Further, PW-7, to whom the co-accused namely,
F 'GS', 'HS' and 'SL', made a disclosure statement describing the whole incident to him on 12.06.2000, has neither recorded the alleged extra judicial confession nor made the disclosure of the said statement within reasonable time but took 16 days to disclose the extra
G judicial confessions made by the accused persons to inform the police. The delay in informing the police regarding the extra judicial confessional statement alleged to have made to him by some of the accused has not been explained by PW-7 and the reason sought to be
H given by him for non disclosure of the same to the police

cannot be accepted by this Court as it is not natural and also not satisfactory. His evidence is not believable. Therefore, the reliance placed upon the evidence of PW-7 by both the trial court and the High Court to convict the appellant and sentencing him for the offence u/s 201 IPC is erroneous in law. [para 23 and 25] [820-D-F; 823-G]

Dwarkadas Gehanmal Vs. State of Gujarat **1999 (1) SCC57 - relied on.**

1.4 Besides, the extra judicial confession is a weak form of evidence and based on such evidence no conviction and sentence can be imposed upon the appellants and other accused. [para 24] [821-B]

Pancho Vs. State of Haryana **2011 (12) SCR 1173 = 2011 (10) SCC 165; and** *Sahadevan & Anr. Vs. State of Tamil Nadu* **2012 (4) SCR 366 = 2012 (6) SCC 403 - relied on.**

1.5 In so far as the other appellants in connected appeals are concerned, the trial court after placing reliance upon the evidence of PW-7, PW-8 and PW-9 has recorded the findings on charges against them, which is wholly untenable in law. Neither the trial court nor the High Court has examined their testimony properly by re-appreciating the same to record the findings on the charges. The narration of the alleged offences against the appellants and other accused by the prosecution witnesses is most unnatural and unbelievable to convict and sentence them. The courts below should have appreciated the evidence on record properly and should not have believed the statement of evidence of PW-8 for the reason that neither he has disclosed the alleged offences said to have been committed by the appellants and other accused nor did he depose before the trial court or to anyone of the villagers. The explanation given by him that he was held out of fear and, therefore, he did

A not disclose the incident to anyone of the villagers cannot be accepted as it is unnatural. Therefore, the evidence of PW-8 cannot be believed by this Court. [para 27] [824-D-H; 825-A]

1.6 The testimonies of PW-8 and PW-9 would clearly
B go to show that there is a discrepancy regarding the narration of the offences said to have been committed by the accused. Therefore, the courts below should not have placed reliance on the evidence of PW-8 and PW-9 and recorded the finding that the charges levelled against
C the appellants/accused were proved. Both the courts below have committed serious error in placing reliance upon the untrustworthy testimonies of PW-8 and PW-9 and passing an order of conviction and sentence against them. Further, from the evidence of the other witness,
D namely, PW-10, the offence alleged to have been committed by said accused also cannot be accepted. [para 27 & 28] [825-A-C; D-E]

1.7 The courts below have convicted and sentenced the appellants on the charges framed against them based
E on the circumstantial evidence, even though the chain of events are not proved by the prosecution to bring home the guilt of the appellants/accused on the charges leveled against them. The concurrent finding recorded by the High Court on the charges is opposed to the legal
F principles laid down in this regard by this Court. The conviction of the appellants/accused for the alleged offence on the basis of evidence of the prosecution witnesses suffers from error in law. [para 28 and 31] [825-G-H; 826-H; 827-A-B]

G 1.8 There is no material evidence on record to convict and sentence the appellants. After going through the deposition of the prosecution witnesses, this Court is satisfied that the case of the prosecution against the appellants/accused on the charges creates suspicion and
H doubt in the absence of legal evidence on record and.

therefore, the same should enure to the benefit of accused for their acquittal. Their conviction and sentences are set aside. [para 30 and 32] [826-G; 827-C]

2. Accused, viz. 'GS' who has also been convicted u/ss 302, 376(2)(g) and 506 IPC and sentenced to undergo imprisonment as awarded by trial court and affirmed by the High Court is extended the same benefit in exercise of jurisdiction of this Court under Article 142 of the Constitution, and he is also directed to be released. [para 33] [827-D-E]

T. Subramanium v. State of Tamil Nadu **2006 (1) SCR 180 = (2006) 1 SCC 401 - cited.**

Case Law Reference:

2006 (1) SCR 180	**cited**	**para 12**
1999 (1) SCC 57	**relied on**	**para 12**
2011 (12) SCR 1173	**relied on**	**para 12**
2012 (4) SCR 366	**relied on**	**para 12**
2007 (9) SCR 44	**relied on**	**para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1279 of 2008.

From the Judgment and Order dated 05.06.2006 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. 716-DB of 2004.

WITH

Crl. A. No. 1280, 1281 and 1282 of 2008.

K.T.S. Tulsi, Fakhruddin (A.C.), Kuber Boddh, Kartikay (For Arun Kumar Beriwal), Sheeba Fakhruddin, Surya Kamal Mishra for the Appellant.

A Sanchar Anand, AAG, Arun K. Sinha, Kuldip Singh for the Respondent.

The Judgment of the Court was delivered by

V. GOPALA GOWDA, J. 1. These Criminal Appeals are B directed against the Judgment and Order dated 05.06.2006 passed by the Punjab and Haryana High Court at Chandigarh in Criminal Appeal No 716-DB of 2004. The Punjab and Haryana High Court affirmed the conviction and sentence of the accused for offences punishable under Sections 302, C 376(2)(g), 148, 201,404 read with Section 34 of the Indian Penal Code with different sentences of imprisonment which will be referred to in the later portion of the judgment to run concurrently and fine imposed upon them. The same is under challenge in these appeals by the appellants urging various D grounds. However, the High Court acquitted the appellants of the charges framed under Sections 3 and 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The appellants have prayed for allowing the appeals by E setting aside the impugned judgment of the High Court and to acquit them from all the charges urging various facts and grounds in support of the questions of law framed in these appeals.

F For proper appreciation of rival factual and legal submissions made by the learned counsel for the parties the relevant facts in relation to the prosecution case are briefly stated as under:

3. On 25.05.2000, FIR No. 73 was lodged at Police G Station Banga, Nawanshahar on the basis of statement of Nago Ram, S/o Munshi Ram who is relative of Seeso, the deceased, for offences under Sections 302, 376(2) (g), 148, 201, 404 read with Section 34 IPC alleging that on 24.05.2000 at about 9.00 a.m. the deceased went to the field to bring fodder H and when she did not return home till afternoon, the informant

along with family members of the deceased and villagers started searching her but they could not gather any information. It was alleged that on 25.05.2000 at 8.00 a.m., the informant along with other people went to the sugarcane field searching for the deceased where they found a fresh pit dug filled back with earth inside which the dead body was lying buried in the soil covered with a palli. It was further alleged that the gold ear rings, silver bangles and anklets from the dead body of the deceased were found missing. It was alleged by the informant that Sunny Lal Paswan, the owner of the land along with three-four persons after committing the murder buried the body of the deceased.

4. On the basis of the registration of the said FIR the case was investigated and report under Section 173 of the Code of Criminal Procedure was filed before the committal court and thereafter it has committed the case to the learned Additional Sessions Judge, Nawanshahar and the case went for trial as the accused pleaded not guilty of charges and prayed to try them for the charges. The charges were framed for offences punishable under Sections 302, 376(2)(g), 148, 201, 404 read with Section 34 IPC and also under Sections 3 and 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The prosecution witnesses PW-1 to PW-15 were examined and the statement of evidence of the witnesses were recorded by the learned Addl. Sessions Judge. The learned Additional Sessions Court has convicted the accused with various sentences for different offences along with fine as has been set out in detail in the later part of the judgment. The same is affirmed by the High Court by passing the impugned judgment. The correctness of the same is challenged in these appeals by the appellants by raising certain legal questions and urging grounds in support of the same.

5. It is contended by the learned senior counsel for the appellant Mr. K.T.S. Tulsi that the High Court ignored the vital aspect of the case, namely, PW-9 Niranjan Ram, the so-called sole eye witness of the alleged offences who has categorically

A stated in his evidence that on 24.05.2000 at about 10.30 a.m. in order to ease himself, he had gone towards the eastern side of the village where a fair was being held. In order to get his hands washed he had gone towards the tube well, where he heard some shrieks, and found that Seeso, wife of Bhajan Ram B was lying on the ground and accused Gurdeep Singh was holding her arms, accused Balwinder Singh and Rajinder Kumar had lifted the legs of Seeso upwards and accused Harnek Singh was committing rape on her. Accused Sunny Lal and Harnek were holding the arms of Seeso. Thereafter C accused Gurdeep Singh gave a Kassi blow on the neck of Seeso. On seeing this he shrieked. On seeing PW-9, the accused Gurdeep Singh chased him with a Kassi in his hand and threatened him that in case he discloses the incident in the village, he and his family will be dealt with the same manner. D Out of fear because of the threat having been inflicted by Gurdeep Singh, PW-9 did not disclose the incident to any one of the villagers or to the family members of the deceased.

6. It is urged by Mr. K.T.S. Tulsi, the learned senior counsel for the appellant in Crl.A. No.1279 of 2008 and Mr. Fakhruddin, E the learned senior counsel who is appearing as amicus curiae in the connected appeals that the statement of evidence of the witnesses narrating the offences said to have been committed by the appellants is most unnatural and improbable to believe. This aspect of the matter in relation to these appellants is not F properly appreciated by the High Court while affirming the conviction and sentences imposed upon them by the learned Additional Sessions judge. The learned senior counsel Mr. Tulsi submits that the High Court placing reliance upon the testimony of PW-9 by extracting his brief statement of evidence in the G impugned judgment has concurred with the conviction and sentences imposed upon the appellant by the Additional Sessions judge and the same is erroneous on the part of the High Court. Hence, he submits that the same is liable to be set aside.

H

7. It is further contended by the learned senior counsel that the High Court has erroneously placed reliance upon the testimony of PW-8 Chet Ram, the brother-in-law of the deceased, who is not even an eye-witness to the incident. PW-8 deposed in his evidence that he saw accused Gurdeep Singh, Harnek Singh, Balwinder Singh, Tejinder Singh and Sunny Lal Paswan carrying some heavy material in a palli and they had placed the same in the sugarcane field. Accused Tejinder Singh dug a pit in the field with the help of a spade and buried the material underneath the earth. On his asking them as to what they had done, accused Gurdeep Singh told that he will also be treated in the same manner and uttered the words "Kutia Chamara Tera bhi iho hal karange". Thereafter the accused Gurdeep Singh with a Kassi in his hand, ran towards him. Out of fear, he ran away towards the village.

8. The learned senior counsel further submits that even presuming the aforesaid witness's statement to be true, it is very unusual and unnatural on his part being the brother-in-law of the deceased in not informing the incident either to the family members or to the police. This aspect of the matter has not been considered by the High Court thereby, it has overlooked the major discrepancy in the statements of witnesses between PW-8 and PW-9, on whose evidence the whole prosecution case is based. PW-8 has stated in his evidence that appellant Tejinder Singh started digging a pit while PW-9 has categorically deposed in his evidence that accused Tejinder Singh was not there at that time.

9. The deposition of the aforesaid witness creates a grave suspicion not only regarding the appellant Tejinder Singh being part of the conspiracy to commit offences but also his presence at the place of occurrence. Non consideration of this major discrepancy in the evidence of the aforesaid witness both by the Trial Court as well as the High Court, has rendered the findings on the charges erroneous in law and therefore the same is liable to be set aside. Further, the High Court has failed to

re-appreciate the evidence of PW-10 Krishna, who has in her deposition, stated the names of the accused persons but she has not named the appellant Tejinder Singh's involvement in committing offences as alleged, which casts a major suspicion in the statement of PW-8 Chet Ram.

10. It is further contended by the learned senior counsel appearing on behalf of the appellant Tejinder Singh in Crl.A. No. 1279 of 2008 that the High Court did not follow the well established principle of law that in appeal against the conviction, the appellate court has the duty to appreciate the evidence on record and benefit of reasonable doubt has to be given to the accused which has not been done by it. In support of this submission, reliance is placed upon the decision of this Court in the case of *T.Subramanium v. State of Tamil Nadu*[1]. Further, elaborating his submission, he has urged that if two views are possible from the very same evidence, it cannot be said that the prosecution had proved its case beyond reasonable doubt. There is a grave doubt regarding the presence of appellant Tejinder Singh at the place of occurrence, which goes to the root of the prosecution case as far as the role of the appellant is concerned in committing offences as alleged.

11. The learned senior counsel has further contended that the High Court has erroneously accepted the evidence of another witness Bhupinder Singh PW-7, (the erstwhile Sarpanch) treating him as a credible witness ignoring the inherent improbabilities in his statement of evidence regarding the alleged extra judicial confession said to have been made to him by the three accused persons other than the appellant in Crl.A. No.1279 of 2008 and the trial court and the High Court having placed reliance upon the same recorded the finding that the charge against the said appellant is proved and conviction and sentence imposed upon him for the alleged offence. This finding of the courts below is bad in law and is liable to be set

1. (2006) 1 SCC 401.

aside. According to the deposition of PW-7, who has deposed that on 28.5.2000 accused Gurdeep Singh, Harnek Singh and Sunny Lal Paswan made a disclosure statement to him describing the whole incident. He has disclosed the same to the police after 16 days of the alleged disclosure statements said to have made to him by the said accused and he had handed over the accused to police custody on 12.06.2000. The reason regarding the delay of 16 days given by him was that he was busy with some work and therefore, there was an inordinate delay of 16 days in informing the incident to the police remains unsatisfactory on the part of the said witness to whom the extra judicial confession alleged to have been made by the co-accused. This renders the conduct of PW-7 doubtful and the content of his testimony suspicious in nature. Further, he being the Sarpanch of the village instead of taking instant action against the accused persons who alleged to have committed rape, murder and destroyed the evidence, informed the police after a lapse of 16 days. This cannot be believed by this Court.

12. It is further contended by him that it is pertinent to mention that the urgency of the work with which he was busy was nowhere explained by him. Learned senior counsel placed reliance upon judgment of this Court in *Dwarkadas Gehanmal Vs. State of Gujarat*[2] in support of his legal submission that if the conduct of the witness is inconsistent with the conduct of an ordinary human being then his testimony has no credence for acceptance. Paragraph 14 of *Dwarkadas Gehanmal's* case (supra) reads as under:

> "14. .....Deva Ram PW-4 would not have waited for five days to disclose the alleged confession made by the appellant to him but on the contrary, he would have either on the same evening gone to the police station to lodge a complaint on the basis of the confessional statement of appellant and/or would have gone to the house of

2. (1999) 1 SCC 57.

A Noorbhai to inform the family members about the confessional statement of the appellant....."

Therefore, the learned senior counsel contends that the observations made in the above referred case would support the case of the appellants herein.
B

Learned senior counsel has placed reliance on various other judgments of this Court wherein extra judicial confession was made. Relevant paragraphs will be extracted in the appropriate reasoning portion of this judgment to appreciate
C the legal submission made by him and to set aside the impugned judgment and to pass an order of acquittal.

13. The learned senior counsel Mr. Tulsi has relied upon the following cases in support of his legal submissions contending that the same would with all fours be applicable to
D the case in hand, namely, *Pancho Vs. State of Haryana*[3], *Sahadevan & Anr. Vs. State of Tamil Nadu*[4] and *Sukhram Vs. State of Maharashtra*[5].

14. The learned senior counsel, Mr. Fakhruddin who is
E appearing for the appellants in the connected appeals has also made his submissions urging the similar grounds as urged by Mr. Tulsi, the learned senior counsel for the appellant in Crl.A. No.1279 of 2008 regarding the evidence of PW-7 in relation to the extra judicial confessional statement alleged to have
F made to him by some of the accused. Further, he has invited our attention to the depositions of prosecution witnesses to show that the findings recorded against the accused by the courts below is not only erroneous but also suffer from error in law and therefore the same is liable to be set aside by allowing
G the appeals.

15. On the other hand, Mr. Sanchar Anand, the learned

3. (2011) 10 SCC 165.

4. (2012) 6 SCC 403

H 5. (2007) 7 SCC 502.

Additional Advocate General for the State of Punjab, has sought to justify the findings and reasons recorded on the charges framed against the appellants herein by the courts below. The trial court being the court of original jurisdiction, in exercise of its power, appreciated the evidence on record and answered the charges levelled against the appellants and other accused holding that they are guilty of the offences committed against the deceased and accordingly after hearing them, the learned Sessions judge has imposed sentence of imprisonment upon the accused for different offences as mentioned in the table which is extracted hereunder:

Name of convict	Under Section	Sentence
Gurdeep Singh	302 IPC	Life imprisonment and fine of Rs.10,000/- in default further RI for one year.
	376(2)(g)IPC	Life imprisonment and fine of Rs.10,000/- in default further RI for one year.
	506 IPC	RI for 5 years and to pay fine of Rs.5000/ or in default further RI for 6 months.
Rajinder Kumar	302 IPC	Life imprisonment and fine of Rs.10,000/- in default further RI for one year.
	376(2)(g)IPC	Life imprisonment and fine of Rs.10,000/- in default further RI for one year.
	404 IPC	RI for 1 year and to pay fine of Rs.1000/ or in default further RI for 1 month.
Harnek Singh alias Naka	302 IPC	Life imprisonment and fine of Rs.10,000/- in default further RI for one year.
	376(2)(g)IPC	Life imprisonment and fine of Rs.10,000/- in default further RI for one year.

	404 IPC	RI for 1 year and to pay fine of Rs.1000/ or in default further RI for 1 month.
Balwinder Singh alias Binder	302 IPC	Life imprisonment and fine of Rs.10,000/- in default further RI for one year.
	376(2)(g)IPC	Life imprisonment and fine of Rs.10,000/- in default further RI for one year.
	404 IPC	RI for 1 year and to pay fine of Rs.1000/ or in default further RI for 1 month.
Sunny Lal Paswan	302 IPC	Life imprisonment and fine of Rs.10,000/- in default further RI for one year.
	376(2)(g)IPC	Life imprisonment and fine of Rs.10,000/- in default further RI for one year.
	404 IPC	RI for 1 year and to pay fine of Rs.1000/ or in default further RI for 1 month.
Tejinder Singh alias Kaka	201 IPC	RI for 7 years and to pay a fine ofRs.5000/ or in default further RI for 6 months
The sentences of imprisonment shall, however, run concurrently		

16. It is further submitted by the learned Additional Advocate General that the correctness of the findings and reasons in the case recorded by the learned sessions judge in convicting and sentencing the appellants/accused has been examined by the High Court in exercise of its jurisdiction after extracting the testimony of the witnesses in the impugned judgment and applying its mind in the backdrop of legal grounds urged in the appeal before the High Court. The High Court has affirmed the conviction and sentence by recording the concurrent findings of fact on the charges by assigning valid and cogent reasons. Therefore, the same does not call for

interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution of India. A

17. With reference to the above factual and legal contentions urged on behalf of the parties, this court is required to examine as to whether the concurrent impugned findings on the charges levelled against the appellants in the impugned judgment are erroneous and require interference by this Court and whether the conviction and sentence imposed on the appellants on the basis of the evidence of PW-7, PW-8 and PW-9 and other prosecution witnesses is legal and valid and requires interference? B C

18. The aforesaid points are required to be answered in favour of the appellants for the following reasons:

In so far as the appellant Tejinder Singh is concerned, the charge is under Section 201 IPC. He has been convicted and sentenced with rigorous imprisonment for 7 years and a fine of Rs.5000/-or in default, to undergo a further rigorous imprisonment for 6 months. This aspect of the matter is considered by us in the backdrop of factual and legal contentions urged by learned senior counsel Mr. Tulsi. D E

19. It is pertinent to refer to the case of *Sukhram* (supra) in order to appreciate the scope of Section 201 IPC. The relevant paragraphs will be extracted to appreciate his contentions in the reasoning portion of the judgment. F

20. As could be seen from the evidence of PW-8 and PW-9, there is major discrepancy between their statements of evidence. PW-8 Chet Ram has stated in his evidence that the appellant Tejinder Singh started digging a pit with spade in the sugarcane field, whereas PW-9 has stated in his evidence that the said appellant was not present at that time. In view of the major discrepancy and contradiction between the statements of one witness and the other, it not only creates a grave suspicion regarding the said appellant being part of the offence G H

A but also makes his presence doubtful at the place of occurrence. Therefore the ground urged in this regard by the learned senior counsel that the learned sessions judge in placing reliance upon the testimony of the said witnesses and recording the finding against the above appellant on the B charges and passing an order of conviction and sentence which is affirmed by the High Court is without proper appreciation of the major discrepancy in the statements of the above named witnesses regarding the presence of the aforesaid appellant at the place of occurrence. The courts C below have also failed to take into consideration the evidence of PW-10 Krishna, wherein she had deposed in the case that on 24.5.2000 at about 8 a.m. she along with Nimmo had gone to take fodder from the fields. At about 9.00 a.m. when they were coming back, they found that Sunny Lal was watering the D fields. In the meantime, the deceased also entered the fields having a jute cloth in her hands. The accused Binder and Kaka were seen going towards the tube well. Accused Gurdeep Singh and Harnek Singh were also seen going on the scooter towards the tube well side, but she has not named the appellant Tejinder Singh. This creates a major discrepancy in the E statements of evidence of PW-8 and PW-9 regarding the participation of this appellant in committing offence as alleged against him.

21. Moreover, there is nothing substantive and positive F evidence placed on record against the aforesaid appellant by the prosecution to prove its case against him. Therefore, the reliance placed in *Sukhram's* case (supra) regarding legal proposition should be applied to the case in hand. It cannot be said that the prosecution has proved its case beyond G reasonable doubt. The benefit of doubt should have been extended to Tej inder Singh in the impugned judgment by the High Court while re-appreciating the evidence on record in exercise of its jurisdiction as it has failed to notice that the ratio laid down at para 18 in the case of *Sukhram* referred to supra H that to constitute an offence under Section 201 IPC the following

four ingredients viz. (i) to (iv) have to be established:

"18. .....To bring home an offence under Section 201 IPC, the ingredients to be established are: (i) committal of an offence; (ii) person charged with the offence under Section 201 must have the knowledge or reason to believe that an offence has been committed; (iii) person charged with the said offence should have caused disappearance of evidence; and (iv) the act should have been done with the intention of screening the offender from legal punishment or with that intention he should have given information respecting the offence, which he knew or believed to be false. It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused. It hardly needs any emphasis that in order to bring home an offence under Section 201 IPC, a mere suspicion is not sufficient. There must be on record cogent evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and that the accused has caused the evidence to disappear in order to screen the offender, known or unknown.

19. In *Palvinder Kaur v. State of Punjab* this Court had said that in order to establish the charge under Section 201 IPC, it is essential to prove that an offence has been committed; that the accused knew or had reason to believe that such offence had been committed; with requisite knowledge and with the intent to screen the offender from legal punishment, caused the evidence thereof to disappear or gave false information respecting such offence knowing or having reason to believe the same to be false. It was observed that the court should safeguard itself against the danger of basing its conclusion on suspicions, however, strong they may be. (Also see *Suleman Rahiman Mulani v. State of Maharashtra, Nathu v. State of U.P, V.L. Tresa v. State of Kerala.*)"

22. For the reasons stated supra we have to record a finding in this judgment that there is major discrepancy in the testimony of witnesses PW-8 and PW-9 and also registration of FIR on the basis of information furnished by the informant. The FIR was registered, investigation was made and charge sheet was filed and the appellant was tried for the charges as he had pleaded not guilty and the Sessions Court convicted and sentenced him for the offence. This finding is erroneous in law for the reason that the statement of evidence of the prosecution witnesses referred to supra has raised serious suspicion and doubt. Therefore, the same must be extended to the other appellants.

23. Further, the learned senior counsel has rightly placed reliance upon the testimony of PW-7 to whom, according to him, the accused persons namely, Gurdeep Singh, Harnek Singh and Sunny Lal Paswan, co-accused, made a disclosure statement describing the whole incident to him on 12.06.2000 who has neither recorded the alleged extra judicial confession nor made the disclosure of the said statement within reasonable time but 16 days to disclose the extra judicial confessions made by the accused persons to inform to the jurisdictional police. The delay in informing the police regarding the extra judicial confessional statement alleged to have made to him by some of the accused has not been explained by PW-7 and the reason sought to be given by him for non disclosure of the same to the police cannot be accepted by this Court as it is not natural and also not satisfactory. Further, the learned senior counsel Mr. Tulsi has rightly placed reliance upon the judgment of this Court in *Dwarkadas Gehanmal's* case (supra) with regard to the conduct of the witness in the said case which is inconsistent with the conduct of an ordinary human being. The observations made in the abovementioned case with all fours applicable to the facts situations of the case in hand, that if extra judicial confessional statement was made by the accused as stated by him in his statement before the trial court were to be true, it was his duty to disclose the same immediately to the police or

to the relatives of the deceased. That has not been done by him and therefore his evidence is not believable. A

24. The extra judicial confession is a weak form of evidence and based on such evidence no conviction and sentence can be imposed upon the appellants and other accused. In support of this proposition, the relevant paragraphs of *Pancho's* case are extracted hereunder: B

> "16. The extra-judicial confession made by A-1, Pratham is the main plank of the prosecution case. It is true that an extra-judicial confession can be used against its maker, C but as a matter of caution, courts look for corroboration to the same from other evidence on record. In *Gopal Sah v. State of Bihar* this Court while dealing with an extra-judicial confession held that an extra-judicial confession is on the face of it, a weak evidence and the courts are reluctant, in D the absence of a chain of cogent circumstances, to rely on it for the purpose of recording a conviction. We must, therefore, first ascertain whether the extra-judicial confession of A-1, Pratham inspires confidence and then find out whether there are other cogent circumstances on E record to support it."
>
> .....
>
> 25. This Court further noted that: (*Kashmira Singh* case, AIR p. 160, para 10) F
>
> > "10. ... cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the Judge G may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession, he would not be prepared to accept."

H

A .....

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

Further, relevant paragraphs from Sahadevan's case are extracted hereunder:

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

.....

H

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

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

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

(iii) It should inspire confidence.

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

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

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

25. Reliance placed upon the decisions of this Court in the case of *Sahadevan's* case (supra) supports the case of the appellant herein. Hence, the reliance placed upon the evidence of PW-7 by both the Additional sessions judge and the High Court to convict the appellant and sentencing him for the offence under Section 201 IPC is erroneous in law for the reason that they have not appreciated the testimony of PW-7 in the backdrop of the legal principles laid down by this Court in the above referred cases on the question of extra judicial

A confession said to have been made by some of the accused to him. Non disclosure of the same either on the same day or within reasonable time either to the police or to the family members of the deceased does not inspire confidence to be accepted as testimony to sustain the conviction and sentence. B After 16 days he had disclosed it to the jurisdictional police which would clearly go to show that the conduct of the said witness is unnatural and improbable to believe and his conduct is not that of an ordinary human being.

C 26. Therefore, the conviction and sentence imposed upon the appellant in Crl. A. No.1279 of 2008 by placing reliance on the testimony of PW-7 along with testimony of PW-8 and PW-9 suffer from major discrepancy and therefore, the appeal in so far as Tejinder Singh is concerned must succeed.

D 27. In so far as the other appellants in connected appeals are concerned, the sessions court after placing reliance upon the evidence of PW-7, PW-8 and PW-9 has recorded the findings on charges against them, which is wholly untenable in law. Neither the learned additional sessions judge nor the High E Court has examined their testimony properly by re-appreciating the same to record the findings on the charges. The narration of the alleged offences against the appellants and other accused by the prosecution witnesses is most unnatural and unbelievable to convict and sentence them. The courts below F should have appreciated the evidence on record properly and they should not have believed the statement of evidence of PW-8 for the reason that neither he has disclosed the alleged offences said to have been committed by the appellant and other accused nor did he depose before the trial court or to G anyone of the villagers. The explanation given by him regarding the non disclosure of the alleged offences said to have committed by the appellants and other accused that he was held out of fear and therefore, he did not disclose the incident to anyone of the villagers cannot be accepted as it is unnatural. Therefore, the evidence of PW-8 cannot be believed H

by this Court. The testimonies of PW-8 and PW-9 would clearly go to show that there is a discrepancy regarding the narration of the offences said to have been committed by the accused. Therefore, the courts below should not have placed reliance on the evidence of PW-8 and PW-9 and recorded the finding that the charges levelled against the appellant/accused were proved. Both the courts below have committed serious error in placing reliance upon the untrustworthy testimonies of PW-8 and PW-9 and passing an order of conviction and sentence against them.

28. Further, the evidence of the other witness namely, PW-10 who deposed that on 24.5.2000 at about 8.00 a.m., she along with Nimmo had gone to bring fodder from the fields. At about 9.00. a.m. when they were coming back, they found that Sunny Lal was watering the fields. In the meanwhile she saw deceased Seeso also entered into the fields having jute cloth in her hands. And after sometime she saw the other accused Binder and Kaka going towards the tube well side. Thus, the offence alleged to have been committed by the said accused also cannot be accepted by us. Further the reliance placed by the courts below on the evidence of PW-7, the erstwhile Sarpanch of the village panchayat regarding the extra judicial confession said to have been made to him by some of the accused referred to supra should not have been accepted by the courts below. In this regard, we have already recorded our reasons and findings with reference to the case law of this Court while considering the case of Tejinder Singh, the appellant in Crl.A. No.1279 of 2008 in the earlier portion of this judgment. The same reasons hold good to the case of these appellants also. Further, the trial court has committed grave error in giving credence to improbable and unnatural evidence of PW-7 regarding extra judicial confession as he has taken 16 days to inform the police. The conviction of the appellants/ accused for the alleged offence on the basis of evidence of the above prosecution witnesses is not only erroneous in law but also suffers from error in law and therefore, the same is liable

A to be set aside by allowing the connected appeals also.

29. Further, the post mortem examination conducted by Board of Doctors has noticed the following injuries on the dead body of Seeso which are relevant for the case:

B "(a) Incised wound 14 x 3 cm x 5 cm deep, on the left side of face and neck, horizontally placed on the lateral apsect of face and neck, anterior and was 8 cm from mid-line of face and 7 cm below the left eye-brow, clots were present in the vicinity of the C wound. The internal juglar vein and external carotid artery were cut. Retraction of edges of the wound were seen.

.....

D (h) There was no external mark of injury, labia, majora and minor were healthy. No blood or discharge, slides 1 and 3 were prepared from the intoritis. Swabs 5 and 7 were prepared. Per speculum examination showed no mark of injury on the vagina, E cervix was normal and were sent to the Chemical examiner, Patiala for semen analysis."

The cause of death as per the opinion of the doctors was shock and haemorrhage due to injury No. (a) which was on the face F and neck and was sufficient to cause death in the ordinary course of nature.

30. In our considered view, after going through the deposition of the prosecution witnesses from the original record of the trial court, we are satisfied that the case of the G prosecution against the appellants/accused on the charges creates suspicion and doubt in the absence of legal evidence on record and therefore the same should enure to the benefit of accused for their acquittal.

H 31. The courts below have convicted and sentenced the

appellants on the charges framed against them based on the circumstantial evidence, even though the chain of events are not proved by the prosecution to bring home the appellants/ accused guilt on the charges leveled against them. The concurrent finding recorded by the High Court on the charges is opposed to the legal principles laid down in this regard by this Court.

32. We have examined the entire case in relation to these appellants and have come to the conclusion that there is no material evidence on record to convict and sentence the appellants. For the foregoing reasons, we accept the case of the appellants in the connected appeals. Accordingly, their appeals are also allowed and conviction and sentence are set aside and they are directed to be released forthwith if they are not required in any other case.

33. The other accused, viz. Gurdeep Singh who has not filed appeal before this Court challenging the impugned judgment and who has also been convicted and sentenced to undergo imprisonment as awarded and imposed by the learned Additional Sessions Judge and affirmed by the High Court, we, in exercise of jurisdiction of this Court under Article 142 of the Constitution, extend the same benefit to him also and he is also directed to be released forthwith if he is not required in any other case.

34. For the foregoing reasons, all the appeals are allowed.

35. The bail bonds of the appellant-Tejinder Singh, who is on bail, are hereby discharged.

R.P. Appeals allowed.