BALDEV SINGH

V.

STATE OF PUNJAB

Criminal Appeal No. 553 of 2008

MAY 6, 2009

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

Penal Code, 1860 :

s. 302/120B – Conviction under, of conspirator by courts below – However, one main accused convicted u/s. 302 and other u/s. 302/34 along with s.450 and also under Arms Act – Conviction of conspirator, challenged to – Held: Conspirator alone could not have been convicted u/s. 302/120B, when main accused were not convicted u/s.120B – Main accused made confession before prosecution witness – Evidence of prosecution witness was not reliable, thus, could not have formed basis of recording conviction against conspirator – Conspirator could not be convicted on basis of purported extra judicial confession by itself – Hence, order of High Court not sustainable and set aside – Evidence.

s. 120B – Conspiracy – Essential ingredients of offence – Stated.

Evidence – Extra judicial confession – Reliability of – Held: Evidence of extra judicial confession is generally of a weak nature – To base conviction thereupon, it is to be corroborated in material particulars – Extra judicial confession must be found to be reliable.

The question which arose for consideration in this appeal was whether the courts below were justified in convicting appellant-conspirator for commission of offence u/s 302/120B IPC and sentencing him to under rigorous imprisonment for life with fine of Rs. 5000/-.

Allowing the appeal, the Court

A HELD: 1.1 An offence of conspiracy which is a separate and distinct offence, thus, would require involvement of more than one person. Criminal conspiracy is an independent offence. It is punishable separately; its ingredients being: agreement between two or more persons
B and agreement must relate to doing or causing to be done either an illegal act; an act which is not illegal in itself but is done by illegal means. A conspiracy ordinarily is hatched in secrecy. The court for the purpose of arriving at a finding as to whether the said offence has been committed or not
C may take into consideration the circumstantial evidence. While however doing so, it must be borne in mind that meeting of the mind is essential; mere knowledge or discussion would not be. [Para 9] [866-D-F]

2.1 The incident took place on 17.2.2001. Appellant
D had left India for Vancouver (Canada), a day prior to the date of incident. He came back to India in August 2004 when he was arrested. The main accused, namely, AS and HS however, were tried separately. HS was found guilty u/s.302 IPC and AS was found guilty u/s.302/34 IPC. They
E were also found guilty u/s 450 IPC. Whereas HS was also found guilty u/s. 27 of the Arms Act, AS was found guilty u/s. 25 thereof. [Para 6] [864-C-D]

2.2 AS and HS were not charged for commission of offence u/s. 120BIPC. Both the courts below passed the
F judgment of conviction and sentence as against the appellant relying on the evidence of LK-PW-26, who was a taxi driver and is said to have overheard the conversation amongst the accused in regard to hatching of a purported conspiracy as also on the basis of an extra judicial
G confession purported to have been made by AS before SS-P.W.22. It is admitted that apart from the said two pieces of evidence, no other evidence was brought on record against the appellant. More so, evidence of PW-26 does not inspire confidence. [Paras 6 and 8] [864-E-G; 865-G]

H

2.3 Neither AS nor HS were charged for commission of offence punishable u/s.120B. Therefore, appellant alone could not have been convicted u/s.302/120B IPC. A purported extra judicial confession was made by AS before SS-PW.22. The distance between the village where AS was residing and that of the SS was said to be 100 kms. He allegedly visited SS on 18.2.2001 at about 9.00 a.m. For no apparent reason, he had disclosed that he along with HS had committed the murder of PS. No details thereof had been furnished. A purported disclosure was also made that the murder was committed at the instance of the appellant. He was asked to come on the next day. He neither visited him thereafter nor was he produced before the police by PW.22. There is nothing on record to show that such a purported extra judicial confession by AS was conveyed to the police authorities; PW. 22's statement having been recorded on 19.2.2001. If he was so familiar with the family of AS there was absolutely no reason why he was not in a position to state as to what was the composition of his family. He admitted that he had never visited the village of AS. [Paras 9 and 10] [870-A-E]

2.4 Evidence of extra judicial confession is generally of a weak nature. No conviction ordinarily can be based solely thereupon unless the same is corroborated in material particulars. Extra judicial confession must be found to be reliable. PW. 22 was examined by police authorities also in some other cases. A suggestion was put to him that he was a police tout. Therefore, his evidence cannot be relied upon. If his evidence cannot be relied upon, the same could not have formed foundation of recording a judgment of conviction and sentence and that too in a case of conspiracy. The evidence of purported extra judicial confession by itself cannot be held to be sufficient for recording a judgment of conviction against a co-accused in terms of section 30 of the Evidence Act. The impugned judgment being unsustainable, is set aside. [Paras 10, 11 and 12] [870-F-H; 871-C]

A *Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra* (2008) 6 SCALE 469; *Nirmal Singh Kahlon vs. State of Punjab & Ors.* (2008) 14 SCALE 639; *Ram Lal Narang vs. State (Delhi Administration)* (1979) 2 SCC 322; *K.R. Purushothaman vs. State of Kerala* (2005) 12 SCC 631; *Darshan Singh @ Bhasuri* B *Ors. vs. State of Punjab* (1983) 2 SCR 605; *Jaspal Singh alias Pali vs. State of Punjab* (1997) 1 SCC 510 – referred to.

Case Law Reference

(2008) 6 SCALE 469	**Referred to.**	**Para 9**
C **(2008) 14 SCALE 639**	**Referred to.**	**Para 9**
(1979) 2 SCC 322	**Referred to.**	**Para 9**
(2005) 12 SCC 631	**Referred to.**	**Para 9**
D **(1983) 2 SCR 605**	**Referred to.**	**Para 9**
(1997) 1 SCC 510	**Referred to.**	**Para 10**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 553 of 2008

E From the Judgement and Order dated 14.12.2006 of the Hon'ble High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 298 of 2006.

T.S. Doabia, Sudarshan Singh Rawat, Abha R. Sharma, with him for the Appellant.

F

Kuldip Singh, R.K. Pandey, T.P. Mishra, H.S. Sandhu, Sanjay Katyal, for the Respondent.

The Judgement of the Court was delivered by

G **S.B. SINHA, J.**

1. This appeal is directed against the judgment and order dated 14.12.2006 passed by a Division Bench of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 298-DB of 2006 affirming the judgment and order dated 30.3.2006 H passed by the Additional Sessions Judge, Jalandhar convicting

the appellant herein for commission of an offence under Section 302 read with Section 120B of the Indian Penal Code (for short, "IPC") and sentencing him to undergo rigorous imprisonment for life and pay a fine of Rs.5000/-, and in default of payment of fine, to further undergo rigorous imprisonment for six months. A

2. Appellant – Baldev Singh and Pritam Singh (the deceased) were brothers. Both were Non Resident Indians (N.R.I.). B

A civil suit was filed by the deceased Pritam Singh against his nephew Harbhinder Singh, Tehal Singh and his brother Baldev Singh seeking declaration that the sale deed executed on 21st October, 1997 on the basis of a Power of Attorney dated 15th October 1990 is null and void as it was allegedly forged and fabricated. C

On or about 17.2.2001 at about 11.00 a.m., when Pritam Singh was making preparation to leave his house in Paragpur for Jalandhar (Punjab), he was killed at his residence. The said incident was allegedly witnessed by Nath Ram (P.W. 25), who was a servant of Pritam Singh for last 40 years and Parminder @ Bittu, the driver of the deceased. D E

A First Information Report ("FIR" for short) was lodged marked as FIR No. 131 of 2001 on 17.2.2001 at about 1.40 p.m. by P.W. 25, wherein he stated:

> "Since last forty years, I have been working as Servant with Pritam Singh, resident of Pragpur. Pritam Singh is an NRI who is residing in England. He has kothi and land in village Pragpur. I look after it and Pritam Singh also visits the place. Pritam Singh has been living in his kothi at Pragpur for the last about 5-6 years. Whenever in the morning, Pritam Singh used to go out in car, then after his crossing I used to close the gate from inside. Today, at about 11 A.M., Pritam Singh after taking meals got ready to go to Jalandhar and I also came out from the Kothi. Parminder Singh @ Bittu driver was standing outside, F G H

A who also accompanied us. In the meanwhile two youngmen came inside through main gate and came to us. One of these youngmen was clean shaven who had covered himself with thin blanket (loi). He was having good height, wheatish complexion and putting helmet on his head. The B second one was a Sikh having wheatish complexion wearing turban on his head and having beared. Clean shaven person took out small double barrel gun .12 bore from loi wrapped by him and fired a shot at Pritam Singh. Then Pritam Singh saved himself cleverly and went inside. C Both these youngmen chased Pritam Singh and went inside through Kainchi gate. Then clean shaven person gave fired another shot at Pritam Singh, which hit on the right side of the back of Pritam Singh as a result of which, Pritam Singh fell down straight on the floor and blood D started oozing from back and chest. Both these youngmen ran away together with their arms and ammunition through main gate. We both saw Pritam Singh. The abdomen of Pritam Singh was ruptured and he had died. Parminder Singh driver and I have witnessed this occurrence. The cause of grudge is that a dispute between both real brothers E Pritam Singh and Baldev Singh regarding Kothi and land is pending in the Court at Jalandhar, which was fixed for hearing on yesterday i.e. 15.2.2001 (sic 16.2.2001). In the year 1988, Baldev Singh along with his sons, son-in-law and other persons duly armed with ammunition had F tried to take possession of kothi and land. Baldev Singh and his accomplices had fired shots and Gurmej Singh of Pritam Singh's party had died, and one person had become injured. In this regard, case FIR No.221/88, under Section 302/307, 148/149 IPC 25/27/54/59 Arms Act was G registered in the Police Station, in which Baldev Singh was convicted and his sons are absconders and have fled away to foreign country. I am sure that even now Baldev Singh, by sending both these youngmen by giving them allurement has got murdered Pritam Singh with gun-shot. H I can identify both these youngmen if they come across

me. Action be taken. I have heard my statement, which is correct." A

The Investigating Officer prepared an inquest report on 17.2.2001. He recovered the clothes and a pair of spectacles with the left glass missing belonging to the deceased. He noticed a gun shot injury on the right side of the back of the deceased. His abdomen was ruptured as pellets had struck in the back and right hand. The Investigating Officer also picked up the blood stained soil from the spot, a blood stained spectacles cover and two empty .12 bore cartridges. He also recovered from outside the room a Canadian driving licence bearing No. 6130617 allegedly belonging to Harbhinder Singh. The dead body was thereafter sent for post mortem examination. B C

On 18.2.2001, the post mortem of the deceased was conducted by a medical board consisting of Dr. H.S. Kahlon (P.W.1), Dr. Rajnish and Dr. Ranbir Singh. It was of the opinion that the death was caused due to shock and hemorrhage, following fire arm injuries which was sufficient to cause death in the ordinary course of business. It was also stated in the report that the death had occurred immediately and the time of death is 24 hours prior to holding of the post mortem examination. D E

On 20.2.2001, Harbhinder Singh was arrested from the Indira Gandhi International Air Port at Delhi while he was about to leave for London. On the same day, one Avtar Singh was also arrested by the police. F

On 23.2.2001, both Harbhinder Singh as well as Avtar Singh made disclosure statements to the police. Pursuant to the recording of the alleged disclosure, some recoveries were made on the pointing out of the accused persons, including two empty cartridges allegedly fired from the gun. G

3. The learned Additional Sessions Judge framed charges against Harbhinder Singh and Avtar Singh under Section 302/ 450 IPC read with 34 IPC and Sections 25/27 of the Arms Act.

A large number of witnesses were examined during the H

A course of the trial. Learned Additional Sessions Judge opining that Harbhinder Singh and Avtar Singh were guilty, convicted them for commission of offences under Sections 302/450 IPC and under Section 25 of the Arms Act.

4. Indisputably, appellant – Baldev Singh left India on 16th February 2001 for Vancouver. He returned to India on 19th August, 2004. His arrival at Delhi Airport was communicated to SSP, Jalandhar. On the basis of this information, ASI Harpal Singh (P.W. 13) after obtaining production warrants arrested Baldev Singh on 20th August, 2004. A supplementary report under Section 173 of the Code of Criminal Procedure ("Code" for short) was filed against him on 24th August 2005. Charge was framed against him under Section 120-B IPC on 19th September, 2005. He pleaded not guilty and claimed to be tried.

The learned Sessions Judge conducted the trial against the appellant separately and examined as many as 28 prosecution witnesses. The learned Sessions Judge found him guilty for commission of an offence under Section 302 read with 120B IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.5000/-, and in default whereof to undergo rigorous imprisonment for 6 months.

In arriving at the said finding , the following evidences were taken into consideration:

i) Deceased was brother of the appellant;

ii) He had a motive to get the brother killed;

iii) Lalit Kumar (P.W.26) being an independent witness, there was no reason to disbelieve his evidence;

iv) Statement of Avtar Singh is admissible under Section 30 of the Evidence Act;

v) Gun with which the shots were fired earlier belonged to the appellant.

5. As noticed hereinbefore, criminal appeal filed by the

appellant has been dismissed by the High Court by reason of the impugned judgment inter alia holding:

> "When all the evidence is taken together the conclusion that is irresistible is that Baldev Singh master-minded his brother's murder. Baldev Siingh was a convict who was undergoing life sentence, was on bail after his sentence was suspended. Baldev Singh had managed to convince Avtar Singh, a fellow jailmate, to also join Harbhinder Singh, who arrived in India on February 7, Baldev Singh purchased the weapon, his son took the weapon and shot the deceased, Baldev Singh left India a day before the occurrence while Harbhinder Singh tried to flee three days after occurrence. The latter was arrested but the former had successfully managed to escape. Baldev Singh's gun was recovered from the possession of his son Harbhinder Singh.
>
> The above chain of circumstances is so complete that one cannot take a view other than that Pritam Singh's murder was committed on the basis of a conspiracy in which Pritam Singh's brother Baldev Singh was a participant, may be the leader. The circumstances are crystal clear and there does not appear to be any ambiguity and inconsistency in the chain. The circumstantial evidence also finds support from the evidence of Sukhdev Singh (PW-22) and Lalit Kumar (PW-26). Therefore, the argument of the learned counsel for the appellant that the appellant was not in the country when Pritam Singh was murdered and could not have conspired in the murder cannot be accepted. Conspirators conspire in secrecy and disperse after the plan has been finalized and separate tasks are assigned to each members of the conspiracy. The conspiracy in this case was to murder Pritam Singh. It was between Baldev Singh and his son and also between Baldev Singh and Avtar Singh. Therefore, the obvious conclusion in this case, on the basis of strong circumstantial evidence, would be that Baldev Singh indeed was a member of the conspiracy.

A In the light of the above, evidence of Sukhdev Singh and Lalit Kumar provides support to the circumstantial evidence. The argument that Harbhinder Singh had not acted at the behest of his father finds no support, either from the evidence on record or from any other B circumstance. This argument is hollow as the circumstantial evidence against the appellant is very strong regarding his participation as a conspirator in his brother's murder."

6. Indisputably, the incident took place on 17.2.2001. Appellant had left India for Vancouver (Canada) on 16.2.2001, C i.e., a day prior to the date of incident. He came back to India in August 2004 when he was arrested. The main accused, namely, Avtar Singh and Harbhinder Singh, however, were tried separately. We may notice that Harbhinder Singh was found guilty under Section 302 IPC and Avtar Singh was found guilty D under Section 302/34 IPC. They were also found guilty under Section 450 IPC. Whereas Harbhinder Singh was also found guilty under Section 27 of the Arms Act, Avtar Singh was found guilty under Section 25 thereof.

It is, however, of some significance to notice that Avtar E Singh and Harbhinder Singh were not charged for commission of offence under Section 120B IPC. The legal position in this regard will be adverted to a little later. At this stage, we may also notice that both the courts below have passed the aforementioned judgment of conviction and sentence as against F the appellant relying inter alia on the evidence of Lalit Kumar (PW-26), who was a taxi driver and is said to have overheard the conversation amongst the accused in regard to hatching of a purported conspiracy as also on the basis of an extra judicial confession purported to have been made by Avtar Singh before G Sukhdev Singh (P.W.22). It now stands admitted that apart from the aforementioned two pieces of evidence, no other evidence was brought on record against the appellant.

7. P.W. 26 – Lalit Kumar – was a taxi driver. His statement was recorded in the court on 15.1.2002. Accused persons are H

said to have hired his taxi from Goraya for going to Paragpur. On the way, they stopped at a 'Dhaba'. According to him, although he was a taxi driver he shared food and drinks with the accused. A plan to cause the death of Pritam Singh was said to have been discussed by them only at the said Dhaba. On the one hand, he stated that he overheard the accused discussing the said subject, but on the other, as noticed hereinbefore, he shared meals and drinks with them. In his cross-examination he admitted that he did not know the accused persons from before; he did not remember the number of his taxi; he was not an owner of the taxi; he had plied taxi only for five days. It is borne out from records that he came to court with Rana, who had shown active interest in the case.

He, when confronted with his statements made before the Investigating Officer, stated:

> "Out of my two statements made above my statement with regard to accused having consumed the liquor in the ahata is correct and my other statement of consuming liquor by accused in dhaba is wrong. 3-4 more people were there in the said ahata."

Indisputably, he did not reveal the said fact to any other person. He made his statement for the first time before the police. He made a statement thereafter only in the court.

8. Although he did not have any acquaintance with the accused persons; he not only could identify the accused in court but appears to have been knowing their nick names as also their avocation of life. Admittedly, Rana is his partner in a business concern known as Saraswati Mill Store, the office of which is located in the building of Rana. His evidence, in our opinion, does not inspire confidence.

9. Conspiracy is defined in Section 120A of the IPC to mean:

> **"120A. Definition of criminal conspiracy.-** When two or more persons agree to do, or cause to be done,—

A (1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to
B commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental
C to that object."

An offence of conspiracy which is a separate and distinct offence, thus, would require involvement of more than one person.

Criminal conspiracy is an independent offence. It is
D punishable separately; its ingredients being:-

(i) an agreement between two or more persons.

(ii) the agreement must relate to doing or causing to be done either (a) an illegal act; (b) an act which is not
E illegal in itself but is done by illegal means.

It is now, however, well settled that a conspiracy ordinarily is hatched in secrecy. The court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence.
F While however doing so, it must be borne in mind that meeting of the mind is essential; mere knowledge or discussion would not be sufficient.

Adverting to the said question once again, we may,
G however, notice that recently in *Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra* [(2008) 6 SCALE 469], a Division Bench of this Court held:

"23. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal
H means is sine qua non of the criminal conspiracy but it

may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement."

Yet again in *Nirmal Singh Kahlon vs. State of Punjab & Ors.* [(2008) 14 SCALE 639], this Court following *Ram Lal Narang vs. State (Delhi Administration* [(1979) 2 SCC 322] held that a conspiracy may be a general one and a separate one meaning thereby a larger conspiracy and a smaller conspiracy which may develop in successive stages. For the aforementioned purpose, the conduct of the parties also assumes some relevance.

In *K.R. Purushothaman vs. State of Kerala* [(2005) 12 SCC 631], this Court held:

"11. Section 120A of I.P.C. defines 'criminal conspiracy.' According to this Section when two or more persons agree to do, or cause to be done (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designed a criminal conspiracy. In *Major E.G. Barsay v. State of Bombay,* (1962) 2 SCR 195, Subba Rao J., speaking for the Court has said:

"The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act, It may comprise the commission of a number of acts."

xxx xxx xxx

A 13. To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither it is necessary that every
B one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implications. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy
C is seldom an open affair, The existence of conspiracy and its objects are usually deducted from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the Court to keep in mind
D the well-known rule governing circumstantial evidence *viz.*, each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt
E is possible. The criminal conspiracy is an independent offence in Indian Penal Code. The unlawful agreement is sine quo non for constituting offence under Indian Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons
F which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the Plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement."

G As noticed hereinbefore, neither Avtar Singh nor Harbhinder Singh were charged for commission of offence punishable under Section 120B IPC. In our opinion, therefore, appellant alone could not have been convicted under Section 302 read with Section 120B of the IPC.

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In *Darshan Singh @ Bhasuri Ors. vs. State of Punjab* [(1983) 2 SCR 605], this Court cautioned that the court ordinarily should not convict a person for commission of offence of conspiracy on the basis of a weak evidence, stating: A

> "The evidence regarding conspiracy is as weak as the evidence about the dying declaration of Sohan Singh, Surat Singh (P.W. 27) speaks of a meeting between the co-conspirators in the house of accused No. 1, Darshan Singh alias Bhasuri. We cannot believe that in the presence of an utter stranger like Surat Singh, the conspirators would discuss their plans to commit these murders, throwing all caution to the winds. The answer of the High Court is that the conspirators were taking liquor while discussing the conspiracy and, B C
>
> 'When liquor is taken, then under its influence sometimes most secret things are divulged in the presence of a person who is not so intimately connected. It is often said, when liquor goes in, truth comes out.' D
>
> This is somewhat artless. Liquor is no lie-detector and we cannot assume that accused Nos. 1 and 2 were so drunk as to overlook the presence of a stranger in their midst yet not so drunk so as to be unable to discuss the execution of their criminal design. Besides, Surat Singh forgot all about the incident and was contacted by the police a few days later. The learned Sessions Judge was right in holding that Surat Singh's evidence suffers from certain infirmities, because of which one could not place implicit reliance upon him. We would go further and say that his evidence is too unnatural to merit serious attention. Apart from the evidence of motive, Surat Singh's evidence in regard to the conspiracy is the only evidence against accused No. 1 Bhasuri and accused No. 2 Joga Singh. It is on that evidence that these two accused have been convicted under Section 120-B read with Section 302 of the Penal Code, the former being sentenced to death and the latter, because of his young age, to life imprisonment," E F G H

A 10. We are now left with the question of purported extra judicial confession by the co-accused Avtar Singh. Such a purported extra judicial confession was made by Avtar Singh before Sukhdev Singh (P.W.22). The distance between the village wherein Avtar Singh was a resident and that of the said B Sukhdev Singh was said to be 100 kms. He allegedly visited Sukhdev Singh on 18.2.2001 at about 9.00 a.m. For no apparent reason, he had disclosed that he along with Bhinda (Harbhinder Singh) had committed the murder of Pritam Singh. No details thereof had been furnished. A purported disclosure was also C made that the murder was committed at the instance of the appellant herein. He was asked to come on the next day. He neither visited him thereafter nor was he produced before the police by P.W.22. There is nothing on record to show that such a purported extra judicial confession by Avtar Singh was D conveyed to the police authorities; P.W. 22's statement having been recorded on 19.2.2001.

If he was so familiar with the family of Avtar Singh, there was absolutely no reason whey he was not in a position to state as to what was the composition of his family. He admitted that E he had never visited the village of Avtar Singh.

Evidence of extra judicial confession is generally of a weak nature. No conviction ordinarily can be based solely thereupon unless the same is corroborated in material particulars.

F 11. Extra judicial confession must be found to be reliable. P.W. 22 was examined by the police authorities also in some other cases. A suggestion was put to him that he was a police tout. His evidence, therefore, in our opinion, cannot be relied upon. If his evidence cannot be relied upon, the same could not G have formed foundation of recording a judgment of conviction and sentence and that too in a case of conspiracy. We must also notice that the evidence of purported extra judicial confession by itself cannot be held to be sufficient for recording a judgment of conviction against a co-accused in terms of Section 30 of the Evidence Act.

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In *Jaspal Singh alias Pali vs. State of Punjab* [(1997) 1 SCC 510], this Court held: A

> "15. The third contention of Mr. Sodhi viz., that it is highly improbable that Jaspal Singh (A-1) would have gone to this witness alongwith his co-accused to confess the guilt, is equally formidable. Chhota Singh (PW 7) has not given any reason as to why and how Jaspal Singh (A-1) and other co-accused have reposed such a confidence in him and confessed their guilt. After going through the evidence of Chhota Singh (PW 7), we do not find it safe to hold any of the appellants guilty in the present crime." B C

12. For the aforementioned reasons, the impugned judgment being unsustainable is set aside. The appeal is allowed. The appellant is in custody; he is directed to be set at liberty unless wanted in connection with any other case. D

N.J. Appeal allowed.