

In the High Court of Punjab and Haryana, Chandigarh.

Crl. Appeal No.437-DB of 2004

Date of Decision: 29.02.2008

Charanjit Kaur

....Appellant.

Versus

State of Punjab

....Respondent

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice Sham Sunder.

Present: Mr. G.S. Kaura, Advocate
for the appellant.

Mr. S.S. Bhinder, Addl. A.G., Punjab
for the respondent.

...

J.S. Khehar, J.

The instant appeal has been filed against the order passed by the Sessions Judge, Faridkot, in Sessions Case No.16 of 2000, decided on 4.3.2004. By the impugned judgement, the accused/appellant Charanjit Kaur has been convicted under Sections 363, 364-A, 302 and 201 of the Indian Penal Code. By a separate order dated 4.3.2004, the accused/appellant Charanjit Kaur was ordered to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/-, under Section 363 of the Indian Penal Code. In default of payment of fine, it was ordered that she would further undergo rigorous imprisonment for three months. She was also ordered to undergo imprisonment for life and to pay a fine of Rs.5,000/-, under Section

364-A of the Indian Penal Code. In default of payment of fine, it was ordered that she would further undergo rigorous imprisonment for a period of three months. Additionally, she was required to undergo imprisonment for life and to pay a fine of Rs.10,000/-, under Section 302 of the Indian Penal Code. In default of payment of fine, it was ordered that she would further undergo rigorous imprisonment for a period of six months. Lastly, she was ordered to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, under Section 201 of the Indian Penal Code. In default of payment of fine, it was ordered that she would further undergo rigorous imprisonment for a period of three months.

The prosecution version of the incident is based on the complaint made by Makhan Singh PW3, resident of village Meenia, to ASI Paramjit Singh PW18, on 2.1.2001. A perusal of the statement of the complainant Makhan Singh PW3 would reveal, that he was married to Sarabjit Kaur in 1992. From the wedlock of Makhan Singh and Sarabjit Kaur, they had two children, first a daughter Rupinder Kaur aged about 8 years, and the second, a son Jaskaran Singh aged about 5 years. Both the children of the complainant Makhan Singh PW3 were students of Hargobind Public School, Loppo. While Rupinder Kaur, the complainant's daughter, was stated to be studying in the second class, his son Jaskaran Singh was stated to be studying in the nursery class. According to the complainant, in the morning (of the day when the complaint was made) on 2.1.2001, his son Jaskaran Singh had gone to Gurudwara Tibi Sahib to pay obeisance in connection with Gurburab. Whereas, Makhan Singh, his wife Sarabjit Kaur and their daughter Rupinder Kaur had remained home. Later on, his daughter Rupinder Kaur had also gone with some children living in

the neighbourhood, to the same Gurudwara. After paying obeisance, the complainant's daughter Rupinder Kaur is stated to have returned home at about 11.00 AM, but his son Jaskaran Singh did not return home till 11.30 AM. Resultantly, the complainant's wife Sarabjit Kaur went out to make a search for her son Jaskaran Singh. The complainant himself made a search for his son in the neighbourhood, as also, at the Gurudwara, but could not find him. According to the complainant, he also arranged to make an announcement from the speaker of the Gurudwara. Despite the aforesaid announcement, his son could not be traced. Yet again, the respectables of the village collected together to search for Jaskaran Singh, but Jaskaran Singh could not be traced anywhere. At about 5.00 PM in the evening of 2.1.2001, the complainant Makhan Singh PW3 found a letter in the small door leading to his house, wherein it was alleged that his son Jaskaran Singh had been abducted. In the letter, 12 tolas of gold was demanded as ransom for his return. Whilst making his statement, the complainant Makhan Singh PW3 also handed over the aforesaid letter of ransom to the police. On the basis of the aforesaid complain, First Information Report bearing No.2 was registered at Police Station, Badhni Kalan in Police District Moga, on 2.1.2001 at 8.00 PM. The special report thereof was received by the Judicial Magistrate Ist Class, Moga on 3.1.2001 at 4.00 AM.

The complainant received another letter of ransom, wherein the complainant Makhan Singh PW3 was informed, that he should reach Amritsar on 6.1.2001 at 12.00 Noon with Rs.1,00,000/-. The aforesaid ransom letter was also delivered by the complainant Makhan Singh PW3 to the police. Since the letters of ransom were received from the side of the house of the accused/appellant Charanjit Kaur, the needle of suspicion

pointed towards her. On 16.4.2001, SI Gurcharan Singh PW6 joined the accused/appellant Charanjit Kaur in the investigation and interrogated her, but since nothing fruitful emerged out of her interrogation, she was let off on 17.4.2001. During the course of investigation, SI Gurcharan Singh PW6 produced the accused/appellant Charanjit Kaur in the Court of the Chief Judicial Magistrate, Moga and took her specimen handwriting. Other specimen of her handwriting were also collected. ASI Shamsheer Singh who was vested with the investigation of the case for sometime, sent the specimen handwritings of the accused/appellant Charanjit Kaur to the Forensic Science Laboratory, Chandigarh, so that the same could be compared with the ransom letters received by the complainant Makhan Singh PW3. The Deputy Director of the Forensic Science Laboratory, Chandigarh after comparing the specimen handwritings of the accused with the ransom letters, opined that the specimen handwritings and the letters in question were in the hand of one and the same person.

In the meantime, on 24.5.2002, the accused/appellant Charanjit Kaur made an extra judicial confession to Lamberdar Hardev Singh PW5. Lamberdar Hardev Singh PW5 also facilitated the arrest of the accused/appellant Charanjit Kaur. She was produced before, DSP Baldev Singh PW7, who after arresting the accused/appellant Charanjit Kaur interrogated her. During the course of interrogation, the accused/appellant Charanjit Kaur made a disclosure statement Ex.P9 to the effect, that she had thrown the dead body in an uninhabited latrine of Bikkar Singh, resident of village Meenia, after putting the same in a gunny bag. The aforesaid disclosure statement was witnessed, inter-alia, by Resham Singh PW19, Naib Tehsildar-cum-Executive Magistrate, Nihal Singh Wala and by the

complainant Makhan Singh PW3, and also, by Sukhdev Singh and SI Jagjit Singh.

In order to determine the cause of the death, the dead body recovered on the pointing out of the accused/appellant Charanjit Kaur, was sent for postmortem examination, through Suraj Pal Singh PW10 and LC Resham Singh. Dr. K.K. Aggarwal, Assistant Professor, Forensic Medicine, Guru Gobind Singh Medical College and Hospital, conducted the postmortem examination on the dead body of Jaskaran Singh, on 25.5.2002. The postmortem examination conducted by Dr. K.K. Aggarwal revealed, that the bones were mud stained. One tuft of hair was present. In the opinion of Dr. K.K. Aggarwal PW1, the cause of death of the child could be given only after the examination of the bones, after boiling. The probable duration between the death and the postmortem examination conducted by him, was stated to be between 1-2 years. The bones were then boiled, dried and examined. Whereupon, Dr. K.K. Aggarwal PW1 opined, that they were human bones and further, that all the bones belonged to one individual. It was also opined, that the approximate age of the person was between 4-6 years. However, since the entire soft tissues were missing, no opinion could be given regarding the cause of death from the available bones.

On the completion of the investigation, a challan dated 25.7.2002 was presented before the Chief Judicial Magistrate, Moga. The Chief Judicial Magistrate, Moga, arrived at the prima-facie conclusion that offences punishable under Sections 302/365/201 of the Indian Penal Code were made out against the accused – Charanjit Kaur. Since the aforesaid offences are exclusively triable by a Court of Session, the Chief Judicial Magistrate, Moga, by his order dated 8.8.2002 committed the case to the

Court of Session.

The Sessions Judge, Faridkot, charged the accused/appellant Charanjit Kaur for the offences punishable under Sections 363, 364-A, 302 and 201 of the Indian Penal Code by an order dated 2.9.2002.

The accused was then confronted with the charges levelled against her. She pleaded not guilty and claimed trial.

During the course of trial, the prosecution examined a number of witnesses. A brief description of the statements of the witnesses produced by the prosecution during the course of the trial, are being summarised hereinafter. The prosecution first of all, examined Dr. K.K. Aggarwal as PW1. Details in respect of the postmortem examination conducted by Dr. K.K. Aggarwal PW1 have already been narrated above. It would, however, be pertinent to mention, that Dr. K.K. Aggarwal PW1 during the course of his cross-examination, acknowledged that no DNA test was conducted. However, it was opined, that a DNA test is not the only manner of determining whether the bones are human bones or not. He also opined that a special laboratory was not required to determine the age and sex, with the aid of bones. He opined that all forensic experts are competent to determine age and sex from bones. The statement of Pritam Singh, Draftsman was recorded as PW2. As per his statement, he had visited the spot and prepared the scaled site plan Ex.P4, alongwith its marginal notes. The statement of Makhan Singh was recorded as PW3. He reiterated the factual position which he had narrated in his statement to the police on 2.1.2001. In addition to his aforesaid statement, he asserted that after he had recorded the aforesaid statement, he received another letter on 6.1.2001, wherein he was required to reach Amritsar with a ransom of Rs.1,00,000/-

if he desired to save the life of his son Jaskaran Singh. He affirmed having handed over the said ransom letter received by him on 6.1.2001, to the police authorities. In his cross-examination, he asserted that he had entertained a suspicion that the accused/appellant Charanjit Kaur may have committed the mischief on account of the fact, that both the letters were delivered from the side of her door i.e. from the side of the house of the accused/appellant Charanjit Kaur. He acknowledged that on 24.5.2002 the disclosure statement of the accused/appellant Charanjit Kaur, was recorded in his presence, wherein on police interrogation, the accused/appellant Charanjit Kaur stated that she had put the dead body of Jaskaran Singh in a gunny bag and had thrown the same in the pit of a dry latrine, in the uninhabited house of Bikkar Singh. Having recorded her disclosure statement, those accompanying the accused/appellant Charanjit Kaur proceeded towards the Dharamshala of village Meenia after having taken alongwith them a photographer Iqbal Singh and the Naib Tehsildar Resham Singh. According to Makhan Singh PW3, the accused/appellant Charanjit Kaur was allowed to lead the police party for the recovery of the dead body of Jaskaran Singh. Accordingly, the accused/appellant Charanjit Kaur got the dead body of Jaskaran Singh recovered from the latrine of the uninhabited house of Bikkar Singh. The dead body of Jaskaran Singh was identified on the basis of the shoes he was wearing and his hair, as also, from his clothing, by the complainant Makhan Singh PW3. A sealed parcel in possession of the police was permitted to be opened during the course of the deposition of the complainant Makhan Singh as PW3. Makhan Singh PW3 identified the shirt, pant, pair of shoes, socks and hair, produced from the parcel, as those of his son Jaskaran Singh, which were recovered when

his dead body was found in the latrine of the uninhabited house of Bikkar Singh. The prosecution then produced Gurdev Singh as PW4. Gurdev Singh PW4 is stated to be engaged in the work of digging pits of latrine in the area. He affirms in his statement that he had gone to the house of Bikkar Singh and climbed down into the well with a rope and brought out the skeleton of a child, as well as, some clothes lying in the latrine pit. The statement of Hardev Singh was recorded as PW5. Hardev Singh PW5 was earlier a Lamberdar and thereafter, a Sarpanch of village Matwani. He asserted that he had known the accused/appellant Charanjit Kaur as she was the daughter of Jaswant Singh a resident of village Meenia. He also asserted, that the accused/appellant Charanjit Kaur had made an extra judicial confession to him, that she had committed the murder of Jaskaran Singh on 2.1.2001. While giving details of her extra judicial confession, Hardev Singh PW5 stated, that the accused/appellant Charanjit Kaur had disclosed to him that Jaskaran Singh had come to her residence at 10.00 AM on 2.1.2001, whereupon, she had strangled him and thereafter wrapped his dead body in a gunny bag and concealed the same in a deserted latrine located in the house of Bikkar Singh. Hardev Singh PW5 further asserted, that the accused/appellant Charanjit Kaur had confessed to him, that she had written a letter to the parents of the deceased Jaskaran Singh, demanding 12 tolas of gold as ransom. As per the statement of Hardev Singh PW5, the accused/appellant Charanjit Kaur had requested him to help her so that she may not be harassed by the police. She had also requested Hardev Singh PW5 to produce her before the police. In furtherance of her request, Hardev Singh PW5 facilitated the arrest of the accused/appellant Charanjit Kaur when he handed her over to Inspector Baldev Singh PW7.

Hardev Singh PW5 asserted that he was a witness on the personal search memo Ex.P12, prepared after the accused/appellant Charanjit Kaur was searched. He also affirms that he was the attesting witness of her arrest memo Ex.P13. The statement of SI Gurcharan Singh was recorded as PW6. In his statement, he affirmed that he had obtained the specimen handwritings of the accused/appellant Charanjit Kaur, after moving an application in the Court. He also asserted, that the Court delivered similar handwriting of the accused/appellant Charanjit Kaur to him. The statement of DSP Baldev Singh was recorded as PW7. According to the statement of Baldev Singh PW7, Lamberdar Hardev Singh PW5 produced the accused/appellant Charanjit Kaur, and that he formally arrested her on 24.5.2002. He also asserted, that during police interrogation, the accused/appellant Charanjit Kaur disclosed in the presence of the complainant Makhan Singh PW3, that she had put the dead body of Jaskaran Singh in a gunny bag and had thrown the same in an uninhabited latrine in the house of Bikkar Singh. He also asserted that the disclosure statement Ex.P9, after being signed by the accused/appellant Charanjit Kaur, was attested by the complainant Makhan Singh PW3. According to the DSP Baldev Singh PW7, he had gone to village Meenia after recording the disclosure statement Ex.P9, and had made a written request to the SDM, Nihal Singh Wala to depute an Executive Magistrate. In furtherance of the aforesaid request, Resham Singh PW19, Executive Magistrate-cum-Naib Tehsildar and Dr. Tarsem Lal came to the Dharamshala. From the Dharamshala, the accused/appellant Charanjit Kaur led the police party and others associated with it, to the uninhabited house of Bikkar Singh. At the house of Bikkar Singh, she pointed out towards the latrine pit, whereupon

Gurdev Singh PW4 was summoned. Gurdev Singh PW4 entered the pit and brought out bones, clothing, a pair of shoes, one tuft of hair, as well as, a badly decomposed gunny bag. On the basis of the articles recovered, the complainant Makhan Singh PW3 identified the dead body as that of his son Jaskaran Singh. Parcels of the recovered articles were prepared. The recovery memos Ex.P10, Ex.P15 and Ex.P17 were prepared and witnessed by Resham Singh PW19, Executive Magistrate-cum-Naib Tehsildar Nihal Singh Wala, as well as, by the complainant Makhan Singh PW3. He also asserted, that he had prepared the inquest report Ex.P11 upon the dead body of Jaskaran Singh, and that the inquest report besides the recovered bones, were sent for postmortem examination through ASI Suraj Pal Singh PW10. He also asserted that on 25.5.2002, ASI Suraj Pal Singh PW10 presented the postmortem report to him. The statement of Dr. Mrs. Neema Garg, Principal, SDS College for Women, Loppo, was recorded as PW8. She asserted that the police had contacted her and demanded the answer sheets attempted by the accused/appellant Charanjit Kaur. She asserted that in furtherance of the aforesaid demand, she had supplied the answer sheets of the accused/appellant Charanjit Kaur pertaining to the subjects of Punjabi (General) and Punjabi (Elective). She also asserted, that she had attested the answer sheets Ex.P18 and P19, furnished by her to the police. The statement of SI Tehal Singh was recorded as PW9. Besides having interrogated the accused/appellant Charanjit Kaur, he had also recorded the statement of the complainant Makhan Singh PW3. The statement of ASI Suraj Pal Singh was recorded as PW10. He tendered into evidence his affidavit Ex.P21. A perusal of his affidavit reveals, that he had taken the bones and clothes handed over to him for postmortem examination on

24.5.2002. The statement of Constable Satnam Singh was recorded as PW11. He tendered into evidence his affidavit Ex.P22. As per his affidavit, he had been handed over sealed envelopes to be deposited at the Forensic Science Laboratory, Chandgiarh, and that, he had duly executed the aforesaid responsibility. The statement of Iqbal Singh was recorded as PW12. As per his statement, he had gone to the place of occurrence on 24.5.2002 and had taken photographs, negatives whereof are Ex.P23 to P33, and the positives whereof are Ex.34 to P39. ASI Shamsheer Singh appeared on behalf of the prosecution as PW13. In his statement, he asserted that he had sent the specimen handwritings of the accused/appellant Charanjit Kaur, as also, the ransom letters to the Forensic Science Laboratory, Chandigarh, on 18.6.2001. The prosecution then produced Inspector Maninder Singh as PW14. As per his testimony, he had recorded the statements of Constable Harjinder Singh, Draftsman Pritam Singh, Photographer Iqbal Singh, MHC Sohan Singh and that of Kulwant Singh. He also asserted that on the completion of the investigation, he had presented the challan. The statement of MHC Kulwant Singh was recorded as PW15. He tendered into evidence his affidavit Ex.P41. A perusal of his affidavit reveals, that on 24.5.2002, the provision of Section 302 of the Indian Penal Code was added to the case. He also asserted, that he had handed over the special report to Constable Harjinder Singh for delivering the same to the Ilaka Magistrate, Moga. The statement of Harjinder Singh was recorded as PW16. He tendered into evidence his affidavit Ex.42. A perusal of his affidavit reveals, that he had delivered the special report of the case after the addition of Section 302 of the Indian Penal Code, to the Ilaka Magistrate, Moga, and to the other higher authorities, on 24.5.2002.

The prosecution then produced Gulwant Kaur as PW17. Gulwant Kaur PW17 proved the orders passed by the Chief Judicial Magistrate, Moga on 17.4.2001 and 11.6.2001. The prosecution then produced ASI Paramjit Singh as PW18. He affirmed having recorded the statement of the complainant Makhan Singh PW3, on 2.1.2001. He also acknowledged having taken into possession the ransom letters received by the complainant Makhan Singh PW3. He further revealed the action taken by him consequent upon the submission of the complaint at the hands of Makhan Singh PW3, on 2.1.2001. Resham Singh, Naib Tehsildar, Makhu, who was previously Naib Tehsildar, Nihal Singh Wala. He appeared on behalf of the prosecution as PW19. He asserted, that on 24.5.2002, he had accompanied the police party for the recovery of the dead body of Jaskaran Singh. He also asserted that he had first gone to the Dharamshala of village Meenia and then to the “bara” of Bikkar Singh where the accused/appellant Charanjit Kaur had pointed out towards an unused latrine where the dead body of Jaskaran Singh was disposed of by her. Thereafter, Gurdev Singh PW4 was summoned, who took out the dead body from the latrine pit. The dead body comprised of bones and hair. The recovery also included clothes, shoes and a gunny bag. The recovered articles were taken into police possession in sealed parcels. He asserted that he had attested the recovery memo Ex.P10, as also, the recovery memo Ex.P15.

The statement of the accused/appellant Charanjit Kaur was recorded under Section 313 of the Code of Criminal Procedure, on 12.11.2003. After the incriminating evidence appearing on the record was put to her, she having denied the same, inter-alia, asserted as under:-

“I am innocent. I have no connection with the crime. The

investigation of this case is not correct. No letter was written by me to any body. These letters have been fabricated. Hardev Singh PW is the close relation of the complainant. Neither I went to Hardev Singh nor suffered any extra-judicial-confession before him nor I got recovered the dead body or other articles. The recovery has been foisted upon me and I have been falsely implicated in this case.”

The accused/appellant Charanjit Kaur was then called upon by the trial Court to lead evidence in her defence. The accused/appellant Charanjit Kaur, accordingly, produced three witnesses in her defence. She first examined Harbans Singh, Assistant DEO (Elementary), Moga as DW1. He had brought the summoned record i.e. the teachers attendance register of Government Primary School, Nangal, pertaining to Bikkar Singh, wherein Bikkar Singh was employed during that period. It was, however, pointed out by Harbans Singh DW1 that Bikkar Singh sought voluntary retirement from his employment w.e.f. 16.3.2003. Vipin Pal Singh, Revenue Patwari, Halqa Matwani in district Moga, was produced as DW2. He affirmed that he knew of Hardev Singh, Sarpanch/Lamberdar of village Matwani. He brought to the Court the summoned jamabandi registers for the year 2001-02 of village Matwani. He also asserted that Hardev Singh PW5 was a resident of village Matwani, and further that, his brother Sukhdev Singh is married at village Meenia. Last of all, the accused/appellant Charanjit Kaur produced Gurmeet Singh as DW3. Gurmeet Singh DW3 is the brother of the accused/appellant Charanjit Kaur. In his statement, he affirmed that the police had arrested the accused/appellant Charanjit Kaur from his house. He also asserted that the aunt (father's sister) of the complainant Makhan

Singh PW3 was married in village Matwani, to Sukhdev Singh. He further stated that Sukhdev Singh is the real brother of Hardev Singh PW5. After recording the statement of the aforesaid witnesses in her defence, the defence evidence was closed by order.

The Sessions Judge, Faridkot delivered the judgement in Sessions Case No.16 of 2000, on 4.3.2004. The accused/appellant Charanjit Kaur was held guilty of the offences under Sections 363, 364-A, 302 and 201 of the Indian Penal Code. On the same date, the accused/appellant Charanjit Kaur was afforded an opportunity of hearing on the question of sentence. Whereafter, by a separate order dated 4.3.2004, the accused/appellant Charanjit Kaur was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/-, under Section 363 of the Indian Penal Code. In default of payment of fine, she was ordered to undergo further rigorous imprisonment for three months. She was also sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-, under Section 364-A of the Indian Penal Code. In default of payment of fine, she was ordered to undergo further rigorous imprisonment for a period of three months. She was also sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/-, under Section 302 of the Indian Penal Code. In default of payment of fine, she was ordered to undergo further rigorous imprisonment for a period of six months. She was also sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, under Section 201 of the Indian Penal Code. In default of payment of fine, she was ordered to undergo further rigorous imprisonment for a period of three months. It was also ordered by the trial Court that all the aforesaid sentences would run concurrently.

A perusal of the evidence produced on behalf of the prosecution, as well as , the judgement rendered by the Sessions Judge, Faridkot reveal, that while convicting the accused/appellant Charanjit Kaur, the Sessions Judge, Faridkot placed reliance on the ocular evidence of the complainant Makhan Singh PW3, as also, that of Hardev Singh PW5. Reliance was also placed on the two ransom letters received by the complainant Makhan Singh PW3, in conjunction with the report of the Forensic Science Laboratory and the handwritings and signatures of the accused/appellant Charanjit Kaur, wherefrom it was concluded that the ransom letters were in the handwriting of the accused/appellant Charanjit Kaur. Reliance was also placed on the disclosure statement Ex.P9, wherein the accused/appellant Charanjit Kaur asserted that she had thrown the dead body of Jaskaran Singh in an uninhabited latrine in the house of Bikkar Singh, after putting the same in a gunny bag. On the basis of the disclosure statement Ex.P9 made by the accused/appellant Charanjit Kaur, recoveries of a set of bones (Ex.P10), rotten gunny bag (Ex.P15) and clothing etc. (Ex.P17) were made. The aforesaid recoveries made from the spot, pointed out by the accused/appellant Charanjit Kaur, were witnessed by Resham Singh PW19, Executive Magistrate-cum-Naib Tehsildar, Nihal Singh Wala, as well as, by the complainant Makhan Singh PW3. Reliance was also placed on the extra judicial confession made by the accused/appellant Charanjit Kaur to Hardev Singh PW5. Last of all, reliance was placed on the statement of Dr. K.K. Aggarwal PW1, affirming that the bones recovered from the pit of the latrine in the uninhabited house of Bikkar Singh, were those of a child between the age of 4-6 years, as also, the fact that the death of the child whose bones were examined by him, had occurred

one and a half years prior to the postmortem examination. It is on the basis of the aforesaid evidence that the trial Court recorded the guilt of the accused/appellant Charanjit Kaur.

In order to controvert the conclusion recorded by the Sessions Judge, Faridkot, the learned counsel for the accused/appellant has raised a number of issues. The contentions advanced by the learned counsel for the accused/appellant are being narrated in the following paragraphs.

The first contention of the learned counsel for the accused/appellant is that the extra judicial confession allegedly recorded by the accused/appellant Charanjit Kaur before Hardev Singh PW5 cannot be taken into consideration to record a finding of guilt against the accused/appellant Charanjit Kaur. In this behalf, it is pointed out that an extra judicial confession is a weak kind of evidence and unless the same is supported by positive and independent evidence in connection with the commission of the crime, the same should not be accepted. It is also pointed out that Hardev Singh PW5 is an unlikely person to whom the extra judicial confession was made by the accused/appellant Charanjit Kaur, on account of the fact that whilst she was a resident of village Meenia, the aforesaid Hardev Singh PW5 was a resident of village Matwani.

We have considered the first contention of the learned counsel for the accused/appellant. It is no doubt true that an extra judicial confession is a weak kind of evidence and can be taken into consideration only if it is supported by other positive and independent evidence. In so far as the present controversy is concerned, it is apparent that the accused/appellant Charanjit Kaur was, first of all, apprehended by SI Gurcharan Singh PW6 on 16.4.2001. Despite her interrogation, nothing

emerged, and she was let off on 17.4.2001. In the meantime, the specimen of her handwritings were taken by producing the accused/appellant Charanjit Kaur before the Chief Judicial Magistrate, Moga. The specimen of her handwritings were also taken from her school. It is in the background of the aforesaid factual position that the accused/appellant Charanjit Kaur must have realised that it was now only a matter of time for the police to arrive at a decision in the matter, as she was aware that the hand-writing taken from her, as also from her school would match the hand-writing on the ransom notes; and accordingly, approached Hardev Singh PW5 and made an extra judicial confession to him. It is the aforesaid Hardev Singh PW5 who facilitated the arrest of the accused/appellant Charanjit Kaur. In the background of the fact that the accused/appellant Charanjit Kaur came to be arrested consequent upon her having contacted Hardev Singh PW5, it is not possible for us to out-rightly reject the fact, that the accused/appellant Charanjit Kaur did not make any extra judicial confession to Hardev Singh PW5. It would, however, be pertinent to mention, that in consonance of her extra judicial confession, the accused/appellant Charanjit Kaur also recorded her disclosure statement Ex.P9, and in furtherance thereof, recoveries were actually made. The aforesaid recoveries came to be recorded in recovery memos Ex.P10, Ex.P15 and Ex.P17. It is, therefore, not possible for us to accept that the extra judicial confession made by the accused/appellant Charanjit Kaur is uncorroborated by any other evidence. In fact, there is substantial evidence on the record of the case, corroborating the extra judicial confession made by the accused/appellant Charanjit Kaur to Hardev Singh PW5. Accordingly, we find no merit in the first contention of the learned counsel for the accused/appellant.

The second contention of the learned counsel for the accused/appellant is that no DNA test was conducted on the bones recovered from the pit of the uninhabited lavatory in the house of Bikkar Singh. In the absence of a positive DNA test, so as to conclude that the bones belonged to Jaskaran Singh i.e. the son of the complainant Makhan Singh PW3, there is no evidence on the record of the case to establish that the disclosure statement Ex.P9 made at the hands of the accused/appellant Charanjit Kaur, and the recovery memos made on the basis of recoveries effected in consonance with the disclosure statement, are in any manner related to Jaskaran Singh i.e. the missing son of the complainant Makhan Singh PW3. It is also the contention of the learned counsel for the accused/appellant that there is no material on the record of the case even to substantiate that the bones recovered from the lavatory pit of the abandoned house of Bikkar Singh, were in fact, human bones. It is submitted that they may well have been the bones of an animal.

We have considered the second contention advanced by the learned counsel for the accused/appellant, as has been noticed in the foregoing paragraph. On the issue in hand, Dr. K.K. Aggarwal PW1, who had conducted the postmortem examination on the bones under reference was duly cross-examined. He had clearly and categorically opined that no laboratory test or equipment was required to determine whether a set of bones are human bones, or bones of an animal. He asserted that he had tested the bones after they were boiled and dried, and he had thereupon opined that they were human bones, belonging to one person with the approximate age of 4-6 years. In view of the statement made by Dr. K.K. Aggarwal PW1, it is not correct for the learned counsel for the

accused/appellant to allege that there was no material on the record of the case to establish that the bones recovered from the lavatory pit in the uninhabited house of Bikkar Singh, were not human bones. In so far as the identification of the bones recovered from the lavatory pit in the uninhabited house of Bikkar Singh is concerned, the prosecution had got identified the clothing and shoes etc., including the tuft of hair recovered, from the father of Jaskaran Singh i.e. the complainant Makhan Singh PW3, at the time the aforesaid articles were recovered from the aforesaid lavatory pit. Those very articles were again identified by the complainant Makhan Singh PW3 during the course of his deposition in Court. There is no justification for us to disbelieve the complainant Makhan Singh PW3, who identified the clothing and shoes of his only son Jaskaran Singh, specially in the background of the fact that the parties are not known to be inimical to one another.

The third contention of the learned counsel for the accused/appellant was that the conviction of the accused/appellant Charanjit Kaur, under Section 302 of the Indian Penal Code is wholly unjustified as there is no evidence on the record of the case to establish that Jaskaran Singh the son of the complainant Makhan Singh PW3 was in fact murdered. Learned counsel for the accused/appellant has invited the attention of the Court to the statement of Dr. K.K. Aggarwal PW1, wherein he had opined that it was not possible from an examination of the bones of the deceased, to determine the cause of the death. It is, therefore, the contention of the learned counsel for the accused/appellant that the trial Court has, without justification, held the accused/appellant Charanjit Kaur guilty of having committed the offence punishable under Section 302 of the

Indian Penal Code.

In rendering an answer to the aforesaid submission of the learned counsel for the accused/appellant, we will have to deal with the totality of the case under reference. There is no doubt about the fact that the accused/appellant Charanjit Kaur was detained in the first instance and interrogated on 16.4.2001. It is obvious that her interrogation at that stage was on account of suspicion that she may be connected with the occurrence under reference. Since nothing fruitful emerged from her interrogation, she was let off. Her involvement in the occurrence emerges from the report of the Forensic Science Laboratory, wherein it was opined that the two ransom letters received by the complainant Makhan Singh PW3 on 2.1.2001, demanding 12 tolas of gold as ransom; and the second letter, wherein a demand was made for delivery of Rs.1,00,000/-, at Amritsar on 6.1.2001; tallied with the handwriting of the accused/appellant Charanjit Kaur. The writings on the letters Ex.P5 and Ex.P8 having tallied with the answer sheets in the subjects of Punjabi (General) and Punjabi (Elective) Ex.P18 and Ex.P19, respectively, which were attested by Dr. Neema Garg, PW8, as those belonging to the accused/appellant Charanjit Kaur, as well as, from the admission form submitted by the accused/appellant Charanjit Kaur Ex.P20. The maneuverability of the accused/appellant Charanjit Kaur in order to prove her innocence is, therefore, only minimal. Added to the aforesaid consideration, is the disclosure statement Ex.P9 made by the accused/appellant Charanjit Kaur. But for the aforesaid disclosure statement, it would have been impossible for any one to have traced the remains of Jaskaran Singh from the dry lavatory pit in the uninhabited house of Bikkar Singh. In so far as the veracity of the recovery of bones and

clothing made consequent upon the disclosure statement of the accused/appellant Charanjit Kaur, is concerned, the investigating agency took care to associate an independent officer. The recovery memos Ex.P10, Ex.P15, and Ex.P17, bear the signatures of Resham Singh PW19, Executive Magistrate-cum-Naib Tehsildar, leave no manner of doubt in so far as the authenticity thereof is concerned. In view of the fact that it clearly emerges from the evidence produced by the prosecution that on the pointing out of the accused/appellant Charanjit Kaur, bones, clothing, shoes and hair belonging to Jaskaran Singh were recovered from a place wherefrom they could not have been recovered, but for the disclosure at the hands of the accused/appellant Charanjit Kaur lend authenticity to the same. It is not possible for us to accept that the statement of Resham Singh PW19, Executive Magistrate-cum-Naib Tehsildar, could have been manipulated at, either the asking of the complainant party or at the asking of the investigating agency. The clothes recovered from the lavatory pit in the uninhabited house of Bikkar Singh, having been identified as those belonging to Jaskaran Singh by his own father i.e. the complainant Makhan Singh PW3 also leaves no ambiguity in the matter. Even in the extra judicial confession made by Charanjit Kaur, she confessed that she strangled Jaskaran Singh and wrapped his body in a gunny bag. We are of the view that the chain of circumstances establishing the guilt of the accused/appellant Charanjit Kaur was completed, without any gaps therein. We, accordingly, uphold the finding recorded by the trial Court to the effect that the accused/appellant Charanjit Kaur having committed the murder of Jaskaran Singh, put the dead body of Jaskaran Singh in a gunny bag and disposed of the same in the dry lavatory of the uninhabited house of Bikkar

Singh. Putting Jaskaran Singh, a child aged about 5 years, in a gunny bag, could have been possible only after he had been done to death. We, therefore, affirm that before putting the dead body of Jaskaran Singh in the gunny bag, he had been done to death by the accused/appellant Charanjit Kaur. The aforesaid clearly establishes her having intentionally committed the murder of Jaskaran Singh, and as such, the offence punishable under Section 302 of the Indian Penal Code.

The last and the fourth contention of the learned counsel for the accused/appellant was to the effect that there was no justification for the accused/appellant Charanjit Kaur to get rid of the body of Jaskaran Singh at the house of Bikkar Singh. It is submitted that the recovery having been made from the house of Bikkar Singh, the needle of suspicion ought to have been against Bikkar Singh and not against the accused/appellant Charanjit Kaur. In this behalf, learned counsel for the accused/appellant has invited the Court's attention to the statement made by the Investigating Officer ASI Paramjit Singh PW18. A perusal of his statement recorded by the trial Court reveals that he did not conduct any investigation so as to determine whether or not, any other person including Bikkar Singh was responsible for the crime under reference.

We find no justification in the last contention of the learned counsel for the accused/appellant noticed in the foregoing paragraph. Once the prosecution had zeroed in, and collected sufficient evidence revealing that the accused/appellant Charanjit Kaur was guilty of the occurrence under reference, there was no necessity, whatsoever, for the prosecution to record statements or to interrogate others, including Bikkar Singh in so far as the crime in question is concerned. For the reasons recorded by us while

dealing with the third contention advanced by the learned counsel for the accused/appellant, wherein we have recorded our conclusions on the basis of the evidence produced by the investigating agency that the accused/appellant Charanjit Kaur, was guilty of having abducted, killed and disposed of Jaskaran Singh, the motive thereof being the ransom demanded by her as is apparent from the two ransom letters referred to above. In view of the above, we are of the view that the investigating agency in not having questioned Bikkar Singh is of no consequence, whatsoever.

No other contention besides the ones noticed hereinabove, was advanced on behalf of the appellant.

For the reasons recorded hereinabove, we find no merit in the instant appeal, and the same is, accordingly, dismissed. The impugned order passed by the trial Court while disposing of Sessions Case No.16 of 2006 on 4.3.2004 is, accordingly, hereby confirmed.

(J.S. Khehar)
Judge.

(Sham Sunder)
Judge.

29.02.2008
sk.