

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1758 of 1999**

Pharsu Ram S/o Mehattar Ram aged about 25 years, occupation Cultivation Resident of Budhwar Thana Dhanora District Bastar Madhya Pradesh (Now Chhattisgarh).

---- Appellant

Versus

The State of Madhya Pradesh (Now Chhattisgarh), through the District Magistrate, Kanker, Madhya Pradesh.

---- Respondent

For Appellant	:	Shri Vishnu Koshta, Advocate.
For Respondent	:	Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****22/04/2015**

1. The Appellant stands convicted under Section 302 IPC to life imprisonment for having killed his step brother Chamru Ram, as ordered by the Additional Sessions Judge, Kanker, dated 24.5.1999 in Sessions Trial No. 451 of 1997.
2. First Information Report, Exhibit P-10, was lodged by PW-3, Chamra Ram, step brother of the Appellant on 5.9.1997 at 19.05 hours naming the Appellant as accused for an occurrence the same day in the morning at around 8:00 am, accusing him of a murderous assault upon the deceased because of a land dispute. The post-mortem of the deceased, Exhibit P-3, was done by Dr. M.K.Chaudhary, PW-4 who noticed (a) lacerated wound on middle of head 8cm x 1cm deep to skull bone (b) a depressed fracture on left side of head about 2 cm in diameter on left side of forehead and (c) ecchymosed on left side of the back 5cm x 3cm. On dissection, the seventh and eighth ribs were found fractured injuring the left lung 1cm long. The cause of death was opined

to be the head injury about 16-24 hours earlier.

3. Learned Counsel for the Appellant submitted that the Trial Court has relied on an alleged extra-judicial confession stated to have been made by the Appellant before Chamra Ram, PW-3, Dallu Ram, PW-8 and Raghu Ram, PW-9. There was no reference to the extra-judicial confession in the FIR lodged by Chamra Ram, PW-3. It is an after thought embellishment by the witness made for the first time during deposition in Court. It cannot be considered reliable for conviction. The other two witnesses likewise in their statements under Section 161 of the Cr.P.C also did not refer to any extra judicial confession by the Appellant but deposed of the same for the first time in Court. Reliance in support of the submission was placed on 2014 (1) CGLJ 53 (DB) (Ashok Dewangan v. State of Chhattisgarh) and on AIR 2011 SC 2545 (Sunil Rai alias Pauna v. Union Territory, Chandigarh). It was next submitted that the only other material is the alleged confession of the Appellant followed by recovery and seizure of his clothes and lathi used for assault allegedly with blood stains. This evidence, admissible to a limited extent under Section 27 of the Evidence Act, was not a substantive piece of evidence to sustain conviction but only a corroborative material. PW-3, who lodged the FIR has denied going to the police station or having witnessed the assault. PW-2, Nirmala Bai the alleged eye witness has become hostile denying to have witnessed the assault by the Appellant. Both the extra-judicial confession and the seizure being weak evidence by themselves requiring further corroboration, conviction was not sustainable.

4. Learned Counsel for the State submitted from the evidence of PW-1, Rajay Bai that the Appellant was seen standing by the side of the body of the deceased when the witness stepped out of the house. PW-2, Nirmala Bai in her statement under Section 161 Cr.P.C deposed of a repeated assault on the deceased corroborated by the post-mortem report. The extra-judicial confession was made before PW-3, Chamra Ram, PW-8, Dallu Ram and PW-9, Raghu Ram. The Trial Court has justifiably relied upon the extra-judicial confession and the memorandum followed by seizure of blood stained

clothes and lathi, corroborating the accusations against the Appellant. The forensic report, Exhibit P-20 has confirmed presence of blood on the lathi recovered on the disclosure by the Appellant as also on his Shirt and Lungi. In his defence under section 313 CrPC, the Appellant has not offered any explanation either with regard to the same or furnished any reason for his false implication. The conviction calls for no interference.

5. We have considered the submissions on behalf of the parties and perused the evidence on record.

6. The father of the Appellant had married twice. While the Appellant was born from one wife, the deceased was born from another wife. PW-3, Chamra Ram was the own brother of the deceased born from the same mother. There was a land dispute between the deceased and the Appellant with the latter opining that he was being given lesser than his due. The crime detail form, Exhibit P-8 reveals the place of occurrence as between the house of the Appellant and the deceased. The informant was the own step brother of the Appellant and not an outsider. The Appellant has not put forth any defence that there was no land dispute between him and the deceased. There existed a motive for the Appellant to make the assault. In our opinion, if the deceased was the own brother of PW-3, Chmara Ram, nobody would be more interested than the latter to state the truth so that the real assailant of his brother does not go free. The FIR, Exhibit P-10, the first rendition of the occurrence states that a verbal duel ensued between the deceased and the Appellant. The Appellant picked up a stick lying on the ground and hit the deceased twice on the head. PW-2, Nirmala Bai, the younger sister had tried to intervene. The post-mortem report reveals two injuries on the head, fracture of two ribs which is indicative of the nature of assault made by the Appellant on the deceased. attributing knowledge if not intention to cause death.

7. Rajay Bai, PW1, sister-in-law of the Appellant has deposed seeing the Appellant standing by the body of the deceased after the assault, which lay on the ground. PW-2, Nirmala Bai, sister of the Appellant has been named in the FIR as present during the time of occurrence. Her denial during deposition of presence at the

time of occurrence is understandable designed to save the Appellant who was related to her. In her statement under Section 161 Cr.P.C, she had stated of the Appellant making a repeat assault on the deceased when she had tried to snatch the stick from his hands. The nature of the assault is corroborated by the post-mortem report which discloses two injuries on the head and one more injury leading to fracture of seventh and eighth ribs. Though, the witness has denied having named the Appellant as assailant under Section 161 Cr.P.C, PW-12, R.D.Bhardwaj, the Investigating Officer has deposed both in his evidence in chief and cross-examination that he had recorded the statement of witnesses exactly in the manner as given to the police under Section 161 Cr.P.C. No cross-examination was done of PW-12 with regard to the same.

8. Chamra Ram, PW-3, the informant, in his deposition has stated having gone to the police station to lodge a report and having put his thumb impression on the same. His daughter-in-law, Dulma, PW-10 has confirmed his going to the police station for lodging the report. The Appellant is stated to have made extra-judicial confession before PW-3 who was related to him and not before any stranger. It was made almost immediately after the assault when the witness came there hearing the commotion. The extra judicial confession finds corroboration from PW-8, Dallu Ram and PW-9, Raghu Ram also deposing of extra judicial confession made before them as well soon after the occurrence. No questions were asked on behalf of the Appellant to the witnesses with regard to the extra-judicial confession, or any suggestion made that he never made an extra-judicial confession. Even in the appeal, it is not the case of the Appellant that he did not make the extra-judicial confession, but that it was not sufficient for conviction in absence of corroboration.

9. Agnu Ram, PW-5, proved seizure of blood stained earth from the place of occurrence marked Exhibit P-4 and the recovery of the lathi used by the Appellant, marked Exhibit P-5 as also the blood stained Shirt and Lungi of the Appellant, marked Exhibit P-6. The forensic report, Exhibit P-20, has proved the presence of blood both on the lathi and the clothes of the Appellant for which he has offered no explanation.

10. PW-1, Rajay Bai, PW-2, Nirmala Bai, PW-3, Chamra Ram and PW-10, Dulma are relatives of the Appellant as also the deceased.

11. An extra-judicial confession is undoubtedly considered a weak piece of evidence which can essentially be used for corroboration. But if the Court is satisfied that it was made voluntarily without any pressure or coercion, there is no reason why coupled with other factors, it cannot be taken into consideration for upholding the conviction. The acceptability of the extra judicial confession would therefore depend on the facts of each case. It is not the case of the Appellant that he has not made any extra-judicial confession. The defence only is that it has been made for the first time in the Court and is therefore suspect. Significantly, this extra-judicial confession has not been made to a third person or outsider but to PW-3, Chamra Ram who was a family member and to PW-8, Dallu Ram and PW-9, Raghu Ram who were co-villagers.

12. In (2001) 2 SCC 205 (Gura Singh v. State of Rajasthan), on the probative value of an extra judicial confession it was observed as follows :-

“6. It is settled position of law that extrajudicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extrajudicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* this Court again in *Maghar Singh v. State of Punjab* held that the evidence in the form of extrajudicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In *Narayan Singh v. State of M.P.* this Court cautioned that it is not open to the court trying the criminal case to start with a presumption that extrajudicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession.....”

13. Likewise, the recovery and seizure of the Shirt, Lungi and lathi on the confession of the Appellant has also not been denied or disputed in cross-examination.

The Appellant has offered no explanation with regard to the presence of blood on his clothes which is not normal as also the lathi. The confession followed by recovery, by itself may not be a substantive evidence but corroborative. Its evidentiary value will however depend on the facts of each case.

14. In the facts and circumstances of the present case, the land dispute being the motive for the assault, PW-3, Chamra Ram, his step brother naming him in the FIR as witness to the assault, PW-2, Nirmala Bai named by PW-3 in the FIR as present during the assault and intervening, having named the Appellant as the assailant in her statement under Section 161 Cr.P.C., as also the evidence of PW-1, Rajay Bai that the Appellant was standing near the body of the deceased which lay on the ground, we do not consider the extra-judicial confession or recovery pursuant to confession together as weak evidence entitling the Appellant to the benefit of acquittal, as they both corroborate each other coupled with other circumstances of the case.

15. Reliance on Ashok Dewangan (*supra*) is not appropriate in the present facts as it is apparent from paragraph 22 of the judgment that the extra-judicial confession was stated to have been made at the police station. Likewise, Sunil Rai (*supra*) has also no application because of the fact that the extra-judicial confession was made before a person with whom the accused had no intimate relationship. In the present case, PW-3, Chamra Ram was his own step brother. Moreover, the recovery of blood stained clothes were not considered very relevant in the facts of that case for reasons discussed as it was a case of circumstantial evidence substantially different from the facts of the present case with presence of eye witnesses.

16. That leaves the only question with regard to appropriate conviction of the Appellant in the facts of the case. The deceased and the Appellant were brothers. There was a land dispute between them. A verbal duel had ensued when the Appellant suddenly picked up a stick and assaulted his brother. Quite apparently, the verbal duel that preceded may have acted as a grave and sudden provocation and the assault could be said to have been made without pre-meditation in a sudden heat of passion

upon a sudden quarrel without taking undue advantage or acting in an unusual or cruel manner coming within Exception (4) of Section 300 IPC. The Appellant may have intended to teach the deceased a lesson but it cannot be said with certainty in the facts of the case that he intended to kill the deceased.

17. We are therefore of the opinion that the conviction of the Appellant is fit to be altered to one under Section 304 Part II IPC for seven years imprisonment from under Section 302 IPC. The order of conviction is upheld with the aforesaid modification of sentence. The Appellant who is already in custody shall undergo the remaining period of sentence.

18. The appeal is allowed in part.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P.Sam Koshy)
JUDGE