

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 568 of 2000**

Vinod Kumar Sahu S/o Dhakelram, Occ. Agriculturist, Resident
of village Bhotali, District Dhamtari (M.P.)

---- Appellant

Versus

State of Madhya Pradesh (now Chhattisgarh)

---- Respondent

For Appellant	:	Shri H. S. Ahluwalia, Advocate
For Respondent-State	:	Smt. Smita Ghai, Panel lawyer

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

C A V JUDGEMENT**Per P. Sam Koshy, Judge****21/12/2015**

1. The present Appeal has been preferred against the judgement dated 09.02.2000 passed by the Additional Sessions Judge, Dhamtari in Sessions Trial No. 427 of 99 whereby the Appellant has been convicted and sentenced to undergo life imprisonment for the offence under Section 302 of IPC.

2. The facts briefly required for deciding the Appeal are that on 24.09.1999 an FIR was lodged at PS Sihawa, District Dhamtari by PW-1 Dhaniram stating that his sister Sushila (hereinafter referred as 'the deceased') died under suspicious circumstances in the intervening night of 23/24.09.1999. Inquest report, in this regard, was prepared on 24th September, 1999 based upon which the FIR was lodged on the same day. The body of the deceased was sent for postmortem, conducted by PW-7, Dr. A. S. Sandilya who after examination found the following injuries vide his report Ex. P-6:

- i) 3 Abrasions on left side and two abrasions on right side of neck i.e. Nail like injury *antimortem*, 3 finger impression on left side and two right side of the neck.
- ii) Face congested and swollen.
- iii) Neck region anteriorly extended up to posterior,
- iv) Bluish in colour on chest.
- v) Abrasion on both heel posteriorly.

The doctor has opined that the death was due to asphyxia because of throttling and the nature of death was homicidal which had occurred 36-48 hours prior to the examination. The deceased was the first wife of the Appellant.

3. During the course of investigation, it is alleged that the accused had made an extra-judicial confession before the neighbours and villagers as well as his second wife Rukmani Bai on the basis of which charge sheet was filed against the Appellant under Section 302 IPC and was put to trial. In the course of trial, the prosecution examined as many as 8 witnesses and the defence on its side examined one witness who is the brother of the Appellant.

4. After conclusion of the trial, the Court below vide impugned judgment found the charges levelled against the Appellant to have been proved beyond reasonable doubt and accordingly, convicted the Appellant under Section 302 IPC and sentenced him to undergo life imprisonment.

5. Counsel for the Appellant challenging the order of conviction submitted that the finding of the Court below is illegal and bad in law as the charges against the Appellant have not been proved beyond reasonable doubt. The conviction was based upon circumstantial evidence alone and the chain of circumstances for establishing the guilt against the Appellant are not complete. The prosecution has failed to establish the fact that it was the Appellant alone who could have killed the deceased particularly when he

was not residing with her and was residing separately with his second wife. That the entire conviction of the Appellant is based upon the alleged extra-judicial confessions which otherwise is inadmissible and is not a voluntary confession as is evident from the statement of prosecution witnesses. According to the counsel for the Appellant, the three circumstances on the basis of which the Appellant has been convicted are that (i) the Appellant had a motive to kill the deceased as he was suspecting her character, (ii) there was extra-judicial confession made to the neighbours and (iii) the conduct of the Appellant by taking a false defence of the deceased having died because of illness. It was argued that these three circumstances do not lead to a positive conclusion of the Appellant alone having committed the offence as these are not fully established before the Court below and even otherwise are not sufficient to point the guilt towards the Appellant of having committed the offence. That the prosecution witnesses themselves have brought on record sufficient evidence to show that there was strained relationship between the Appellant and the deceased. It has also come in evidence that there were many villagers who were not liking the deceased for the reason that they suspected her of practicing witchcraft. Therefore, the possibility of the offence having been committed by another villager cannot be ruled out. It was submitted that none of the prosecution witnesses or for that matter the evidence which has come on record establish the fact that the so-called extra-judicial confession was voluntarily made, rather it is a case where all the prosecution witnesses have accepted the fact that it was only on being questioned either by a group of persons or by the Police that the Appellant made the confessional statement which is otherwise not admissible under the provisions of Evidence Act. Counsel for the Appellant placed his reliance upon the recent judgment of the Supreme Court in the case of V. K. Mishra and Another Vs. State of Uttarakhand reported in (2015) 9 SCC 588

wherein it has been held that even if there is a false defence taken by the accused person, that alone by itself cannot be a ground for conviction. At best, it could be one of the incriminating factors against the Appellant but it cannot be the solitary ground for holding the Appellant to be guilty of the offence.

6. State counsel opposing the Appeal strenuously argued that it is a case where there is sufficient evidence on behalf of the prosecution regarding the extra-judicial confession made by the applicant and the said confessional statement itself is sufficient for his conviction. It was argued that the motive to kill in this case is quite well established by the prosecution as the Appellant was doubting the character of the deceased and wanted to eliminate her as the Appellant's reputation in the village was being tarnished because of the acts and behaviour of the deceased. It was also contended that since the deceased was staying in the house of the Appellant though in the adjacent room, it was only the Appellant who had access to her room and that the Appellant has not been able to give a satisfactory explanation as to how the deceased died. It was also argued that in fact, the Appellant initially had taken a defence of the deceased dying a natural death because of some illness, however, only after the postmortem it has revealed that the deceased died a homicidal death because of throttling, thus, the said taking of a false defence by the Appellant at the first instance also adds to the chain of circumstances and the drawing of an inference against the Appellant for having committed the said offence. Counsel for the State referring to Section 106 of Evidence Act submitted that the burden of proof falls upon the defence to show as to how the deceased died of throttling when she was living in the house of the Appellant adjacent to a room where Appellant was staying. It was lastly submitted that there was an injury mark on the hand of

the accused which has not been satisfactorily explained which perhaps occurred during scuffle between the Appellant and the Deceased. The statement of the accused about the said injury being an old one stands disproved from the evidence of the doctor who has deposed before the Court that the injury appears to be tender and appears to be of the period when the deceased had died, which also points towards the accused to have committed the offence.

7. Considering the rival contentions put forth by the counsel appearing on either side and on perusal of the record what is an admitted fact is that the entire conviction of the Appellant is based on the alleged extra-judicial confession and circumstantial evidence.

8. An extra-judicial confession made voluntarily without any coercion, fear or duress, inspiring confidence can be the basis of conviction, but it is a weak piece of evidence and in generally needs corroboration from other facts and circumstances. But in the present case, we find that there is no voluntary extra-judicial confession made by the accused. In order to be a valid extra-judicial confession it must be made voluntarily without any coercion and undue influence. In the instant case, all the prosecution witnesses like PW-3 Damanlal Sahu, PW-4 Ramadhin and PW-6 Rajaram have made categorical statement that after they had reached the place of incident, they had together taken the accused to a corner in the courtyard, where upon being questioned by them, the Appellant initially said that the deceased had died because of illness but again on questioning later on, he is said to have confessed of having killed her by throttling. The very fact that from the deposition of all the above said witnesses whereby they have stated that upon their questioning, the accused had made a statement of his having committed the offence makes the alleged confession not voluntary but a statement extracted on questioning which cannot be equated and put at par with a voluntary extra-judicial confession.

Likewise, from the evidence of these witnesses it is also evident that the Police were also in and around the place when these witnesses are said to have questioned the accused. Thus, the relevance of the so-called extra-judicial confession gets diminished. Reliance may appropriately be placed on (1991)1 SCC 286 (Kishore Chand v. State of H.P.) observing as follows :-

“7.....The next piece of evidence is the alleged extra-judicial confession made by the appellant to PW 10. An unambiguous extra-judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of its falsity. But in the process of the proof of the alleged confession the court has to be satisfied that it is a voluntary one and does not appear to be the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26 of the Evidence Act. Therefore, the court has to look into the surrounding circumstances and to find whether the extra-judicial confession is not inspired by any improper or collateral consideration or circumvention of the law suggesting that it may not be true one. For this purpose the court must scrutinise all the relevant facts such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made and finally the actual words used by the accused. Extra-judicial confession if found to be voluntary, can be relied upon by the court along with other evidence on record. Therefore, even the extra-judicial confession will also have to be proved like any other fact. The value of the evidence as to the confession depends upon the veracity of the witness to whom it is made and the circumstances in which it came to be made and the actual words used by the accused.”

9. In case of circumstantial evidence, there must be some tangible material linked with a chain of circumstances and one circumstance must be intertwined with the other in a continuous link compatible only with the guilt of the accused pointing inescapably to the same. There must be no other hypothesis possible compatible with the innocence of the accused. In the latter case, the benefit of doubt must be given to the accused. From the evidence it appears that the conduct of the deceased was annoying the accused as his reputation in the society was getting tarnished but at the same time, there are sufficient evidence on record which shows that there were other people also who were having access to the room where the

deceased was staying and there were visitors who used to visit her during day time as well as at night also. Likewise, the prosecution witnesses have given sufficient indication of the deceased being involved in practicing witchcraft which annoyed many villagers and the possibility of another person committing the offence because of the involvement of the deceased in witchcraft cannot be ruled out. Though PW-5, Rukmani Bai initially in her statement under Section 161 Cr.P.C. had claimed to be an eye witness to the incident but later on, she turned hostile and has not supported the case of the prosecution yet the portion of her deposition where she has denied witnessing the incident was not put to confrontation with the Investigation Officer of not having made such statement in her 161 statement. This itself is a serious lapse on the part of the prosecution in proving its case beyond reasonable doubt. Once the Appellant has created a doubt in the mind of the Court in addition to the chain of circumstances not being complete, the benefit of the same ought to go to the accused/appellant.

10. Another link joining the chain of circumstances is the conduct of the Appellant wherein it is alleged that all along he had been making a statement of the deceased having died a natural death because of some illness. It is this information which was also passed to the family members at the parental home of the deceased from where PW-1, brother of the deceased was present at the post death rituals of the deceased. However, from the postmortem it is revealed that it was a homicidal death and not a natural death, in as much as the death occurred because of asphyxia due to throttling as is evident from the deposition of the doctor PW-7 who had conducted the postmortem. If the other chain of circumstances leading to the commission of the offence by the accused is not established and proved, the only conduct of the accused whereby the defence which he had taken

gets falsified alone cannot be the sole factor for reaching a conclusion that the case of the prosecution has been established beyond reasonable doubt.

11. In view of the above facts and circumstances of the case, since the prosecution has not been able to complete the chain of circumstances for proving the case of the prosecution beyond all reasonable doubts, the conviction of the Appellant stands on a weak footing as the alleged chain of circumstances is not sustainable in the eye of law. Further, the prosecution has not been able to prove beyond all doubts that it was the Appellant alone who had committed the offence as the prosecution itself has sufficiently proved of there being visitors in the room of the deceased even during night time coupled with the fact that relationship between the Appellant and the deceased were strained for quite sometime and she was managing her affairs all by herself.

12. So far as the submission of the State for taking an inference under Section 106 of the Evidence Act is concerned, in fact, it is the prosecution which has to lay a prima facie foundation through the deposition of the prosecution witnesses on the basis of which then an inference could have been drawn. But in the instance case, the prosecution has not been able to lead any such evidence or proof, rather the statements of the witnesses who turned hostile were not confronted with the Investigating Officer. The prosecution witnesses were not also confronted with the statement of the Investigating officer with regard to the recording of their statement under Section 161 Cr.P.C. as the same is entirely different from the version given by these witnesses before the Court. Therefore, the Prosecution cannot get the advantage of the same and the benefit of the said lapse on the part of the prosecution has to go to the Appellant.

13. For the foregoing reasons, we are unable to sustain the conviction of the

Appellant. Accordingly, the judgment of conviction and sentence dated 09.02.2000 passed by the Additional Sessions Judge, Dhamtari in Sessions Trial No. 427/1999 is set aside. The Appellant is acquitted of the charge under Section 302 of IPC. He is set at liberty subject to the conditions of Section 437A Cr.P.C.

14. The Appeal is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE