

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 317 OF 2012

Prabhu @ Prabhakar Dhondiba Kamble,
age 47 years, occ. Labourer,
R/o Ujed, Taluka : Shirur Anantpal,
District Latur

... **APPELLANT**

VERSUS

The State of Maharashtra,
through Police Station Inspector,
Police Station, Shirur Anantpal,
District Latur.

... **RESPONDENT**

Mr. Joydeep Chatterjee, Advocate for the Appellant
Mr. A.S.Shinde, APP for Respondent/State

**CORAM : A.B.CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATED : 8th September, 2015

ORAL JUDGMENT : [Per Indira K.Jain, J.]

1] This Appeal is preferred by the appellant - original accused against the Judgment and Order dated 22nd March, 2012 passed by the learned Additional Sessions Judge, Nilanga, District : Latur in Sessions Case No.24 Of 2010. By the said Judgment and Order learned Additional Sessions Judge convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code

and sentenced him to suffer imprisonment for life and to pay fine of Rs.2000/- in default to suffer further rigorous imprisonment for one year.

[2] For the sake of convenience, we shall refer the appellant in his original status as accused as he was referred before the trial court.

[3] Prosecution case, briefly stated, is as under :-

(i) Deceased Anita was wife of brother of appellant. She was residing in neighbouring house of appellant at village Ujed, Taluka : Shirur Anantpal, District : Latur.

(ii) On 10th February, 2010 in the morning Anita was murdered. Dnyanoba Bhimrao Reddy, Police Patil of village Ujed was informed about murder of Anita. He rushed to the spot of incident and found Anita lying dead having multiple injuries on her person. Dnyanoba Reddy then informed Police Station, Shirur Anantpal, regarding murder of Anita. Said report was treated as First Information Report. CR No.45/2010 was registered against appellant.

(iii) PW 12 Police Inspector Balasaheb Laxmanrao Deshmukh took over investigation. He visited the spot and recorded spot panchnama and inquest panchnama in presence of panch witnesses. From the spot, simple earth, earth mixed with blood and pieces of bangles were seized.

(iv) Then dead body was sent for post mortem to Primary Health Centre, Shirur Anantpal. Dr. Rauf A.R. Sahikh was Medical Officer on duty. He performed post mortem. During post mortem examination Medical Officer noticed eight chop wounds on the dead body. Most of them were on neck of deceased. All injuries were grievous and anti-mortem. Doctor opined probable cause of death due to hemorrhagic shock due to multiple chop wounds. He accordingly prepared post mortem report.

(v) During investigation statements of several witnesses were recorded by the investigating agency.

(vi) On the same day accused went to Police Station on his own alongwith an axe and produced axe before Police, informing that he committed murder of Anita. Accused was arrested and an axe and his clothes were seized. An entry was so made in the station diary.

(vii) Seized muddemal was forwarded to Chemical Analyser. On completing investigation charge sheet was submitted before the learned Judicial Magistrate, First Class, Nilanga, who in own turn committed the case for trial to the court of Sessions.

[4] Charge came to be framed against the accused at Exhibit 4. He pleaded not guilty to the charge and claimed to be tried. Regarding alleged commission of offence defence of accused

was of total denial and false implication.

[5] To substantiate its case, prosecution examined in all 12 witnesses. After going through the evidence adduced in the case, learned Additional Sessions Judge, Nilanga convicted and sentenced the accused, as stated in paragraph 1 above. Hence, this Appeal.

[6] We have heard at length learned counsel for the appellant and the learned Additional Public Prosecutor for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for parties, judgment delivered by learned Additional Sessions Judge and evidence on record, for the below mentioned reasons, we are of the opinion that prosecution failed to prove the charge against the accused and accused deserves acquittal.

[7] There is no eye witness to the incident. Conviction is based on circumstantial evidence. It has been consistently laid down by the Hon'ble Apex Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. A legal trend would further show that for a conviction in murder case on circumstantial evidence, following conditions must be fulfilled :

(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is, they should not be explainable on any other hypothesis except that the accused is guilty.

(iii) The circumstances should be of a conclusive nature and tendency.

(iv) They should exclude every possible hypothesis except the one to be proved.

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and it must show that in all human probability, the act must have been done by the accused and the accused alone.

In the present case, circumstances on which prosecution relied upon against the accused are as under :-

- (I) **Extra Judicial Confession by accused to PW 7 Bhagwan Birajdar and PW 11 Hamid Patel.**
- (II) **Accused on his own attending the Police Station with an axe and confessing the guilt.**
- (III) **Recovery of blood stained clothes from the person of accused.**

(I) Extra Judicial Confession : -

[8] On the law relating to extra judicial confession, learned counsel for accused vehemently submitted that extra judicial confession is a weak piece of evidence and unless corroborated cannot be relied upon. In support thereof, learned counsel relied upon **State Of Andhra Pradesh vs Gangula Satya Murthy**¹ in

¹ 1997 AIR (SC) 1588.

which it has been held as under :-

“ 15. One of the circumstances relied on by the prosecution is that respondent had confessed the guilt to PW-6 and PW-7. In other words, prosecution relied on the extra judicial confession of the respondent spoken to by the said two witnesses, they buttonholed the respondent and confronted him with certain questions pertaining to the death of the deceased and then respondent had blurted out to them of what happened. Witnesses further deposed that respondent took out a letter and showed it to them. Witnesses thereupon took him to the police station where that letter was also produced. PW-14 - Sub Inspector of Police confirmed that those two witnesses brought the respondent to the police station and produced Ext. P-13 letter.

16. Truth of the evidence of PW-6 and PW-7 stands vouchsafed by Ext. P-13 letter as the same was proved to be a letter written by the deceased to the respondent. PW-12 Assistant Director, Forensic Science Laboratory, who was also a Handwriting Expert examined the handwriting on the letter with the admitted handwriting of the deceased found in some answer sheets (which police collected from the Principal of the School where Satya Vani studied - PW-13) PW-12 gave cogent reasons for his conclusion that both were written by the same person. A reading of the contents in that letter admits of no doubt that it was addressed to the respondent in this case.

20. But the confession made by the respondent to PW-6 and PW-7 was not made while he was anywhere near the precincts of the police station or during the surveillance of the police. Though Ext. P-7 would have been recorded inside the police station its contents were disclosed long before they were reduce to writing. We are only concerned with the inculpatory statement which respondent had made to PW-6 and PW-7 before they took him to the police station. So the mere fact that the confession spoken to those witnesses was later put in black and white is no reason to cover it with the wrapper of unadmissibility. We find that the High Court has wrongly sidelined the extra judicial confession.”

[9] It is well settled that, prior to placing any reliance upon extra judicial confession made by accused it is an imperative duty of the Court to satisfy judicial conscience. The governing principles

relating to evidentiary value of extra judicial confession are that such confession must be made **voluntarily** and must reflect **true state of affairs**.

[10] In the present case evidence of PW 7 Bhagwan Anandrao Birajdar and PW 11 Hamid Goremiya Patel is important on extra judicial confession.

At the outset it is to be mentioned here that PW 7 Bhagwan did not support the prosecution. He was declared hostile. A futile attempt was made in cross-examination to prove his statement under Section 164 of the Code of Criminal Procedure at Exhibit 38. This witness does not assist the prosecution in any way.

[11] The star witness on extra judicial confession is PW 11 Hamid Goremiya Patel. Trial court was impressed by the evidence of PW 11 Hamid as he is one of the respectable persons in village. Hamid Patel deposed that on 10th May, 2010 accused told him and others, who gathered on the spot that he had killed Anita by an axe which he was holding in his hand and he murdered her. The crucial question is whether it would be safe to rely upon his testimony particularly looking to the inordinate and unexplained delay in recording his statements under Sections 161 and 164 of the Code of Criminal Procedure.

[12] Commenting upon the evidence of PW 11 Hamid, learned counsel for accused submitted that his statement was recorded after 1½ months. No explanation is given by the investigating agency for not recording statement of this witness at the earliest possible opportunity. Learned counsel submitted that this

itself is enough to discard the testimony of PW 11 Hamid. In support of his submission learned counsel placed vehement reliance on **Ganesh Bhavan Patel & Anr. vs State Of Maharashtra**² in which it has been held thus : -

“ 15. As noted by the Trial Court, one unusual feature which projects its shadow on the evidence of P.Ws., Welji, Pramila and Kuvarbai and casts a serious doubt about their being eyewitnesses of the occurrence, is the undue delay on the part of the investigating officer in recording their statements. Although these witnesses were or could be available for examination when the investigating officer visited the scene of occurrence or soon thereafter, their statements under Section 161 Cr. P.C. were recorded on the following day. Welji (P.W. 3) was examined at 8 a.m., Pramila at 9.15 or 9.30 a.m., and Kuvarbai at 1 p.m. delay of a few hours, simpliciter, in recording the statements of eyewitnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. A catena of circumstances which lend such significance to this delay, exists in the instant case.”

[13] With the able assistance of learned counsel for the parties we have gone through the evidence of prosecution witnesses and police papers. It can be seen from police papers that statement of PW 11 Hamid under Section 164 of the Code of Criminal Procedure was recorded by learned Judicial Magistrate, First Class on 23rd June, 2010 and statement under Section 161 of the Code of Criminal Procedure was recorded by investigating agency on 25th June, 2010. Neither the witness nor the Investigating Officer could explain delay of around 1½ months in recording statement of this important witness. In the absence of satisfactory explanation regarding delay it would be unsafe to place reliance on the sole testimony of PW 11 Hamid on alleged extra judicial confession. We

2 AIR 1979 Supreme Court 135.

find that unexplained delay in recording statement of PW 11 Hamid is fatal to the prosecution case.

(II) Accused on his own attending the Police Station with an axe and confessing the guilt.

[14] PW 12 Police Inspector Balasaheb Laxmanrao Deshmukh deposed that on the day of incident itself accused on his own came to the Police Station alongwith an axe and accordingly entry in the Station diary Exhibit 57 was recorded. We have perused station diary entry Exhibit 57. It is not known from this entry who recorded it. Prosecution has not examined the witness who has taken station diary entry Exhibit 57. There is no whisper in the evidence of PW 12 Police Inspector Balasaheb Deshmukh that he recorded station diary entry Exhibit 57. It was incumbent on the prosecution to examine witness on station diary. In the absence of such evidence, station diary entry also would not be helpful to prove the post conduct of accused.

(III) Recovery of blood stained clothes from the person of accused.

[15] According to prosecution clothes of accused and deceased were seized. Articles recovered from the spot and an axe were also seized. The seized muddemal was sent to Chemical Analyser. C.A. Report Exhs. 13 to 16 were received. C.A. Report Exhibit 14 shows that on Exhibit 2 Gamchha (गमछा) of accused human blood was detected. So also on axe produced by accused human blood was found. Referring to C.A. Report it was contended on behalf of prosecution that complicity of accused is established as

he has not given any plausible explanation for the blood stains found on gamchha and axe produced by him.

[16] It is pertinent to note that witness on seizure of clothes of accused and deceased were declared hostile. Seizure panchnamas of clothes have been proved through Investigating Officer at Exhs. 54 and 55. From C.A. Report Exhibit 15 it can be seen that sample of blood of deceased was examined and result in respect to blood group was inconclusive.

[17] Another C.A. Report Exhibit 16 shows that blood group of accused was "B". On axe human blood of group "B" was found. The other articles i.e. clothes of the deceased, blood stained earth seized from the spot and pieces of bangles were also found with blood of group "B".

[18] From the results of analysis it can be at the most said that blood group of deceased was "B" but since blood group of accused was also found "B" it would not be appropriate to convict the accused only on the basis of this circumstance, in the absence of corroboration and cogent and convincing evidence.

[19] In the light of the above, we are of the view that prosecution has not discharged its burden beyond reasonable doubt. As a result, Appeal deserves to be allowed. Hence, the following order :-

ORDER

- (i) Criminal Appeal is allowed.
- (ii) Impugned Judgment and Order dated 22nd March, 2012 passed by the learned Additional Sessions Judge, Nilanga, District : Latur in Sessions Case No.24 Of 2010 thereby convicting the appellant - accused for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs.2000/- in default to suffer further rigorous imprisonment for one year, is quashed and set aside.
- (iii) Appellant – accused is set at liberty forthwith if not required in any other crime.
- (iv) Disposal of the muddemal property on the line of directions already issued by the learned Additional Sessions Judge, Nilanga, District – Latur.

[INDIRA K. JAIN, J.]**[A.B.CHAUDHARI, J.]**