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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 812 OF 2007

Sameer (Samir) Botukrushna	]	
(Botukrishna) Das	]	
Aged about 29 years,	]	
Occ: Service, Residing at	]	
Kurar Village, Ambewadi,	]	
Udab Chawl Malad (E),	]	
Mumbai	]	
(Presently lodged in Central Jail,	]	
Thane)	]	
		]..Appellant
		[Ori. Accused]
Vs.		
The State of Maharashtra		]..Respondent

....

Ms. Rohini Dandekar Advocate appointed for the Appellant
Smt. V.R. Bhonsale A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI AND
SHRI.A.S.GADKARI, JJ.**

DATED : AUGUST 27, 2015

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 This appeal is preferred by the appellant-original
accused against the judgment and order dated 11.4.2007

passed by the learned 8th Ad-hoc Additional Sessions Judge, Sewree Mumbai in Sessions Case No. 553 of 2006. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to imprisonment for life and fine of Rs.5000/- in default S.I. for six months.

2 The prosecution case, briefly stated, is as under:

(i) The first informant PW 2 Sunil was residing at Bhatungi Pada in Adivasi Pada, Malad (E), Mumbai. There was electricity supply in Adivasi Pada. PW 3 Prashant was the neighbour of PW 2 Sunil. His hut was adjacent to the hut of PW 2 Sunil.

(ii) On 22.8.2006 at about 7.30 p.m. Sunil returned home. Thereafter he watched movie on television till 12 midnight. After that he came out of his house for passing urine. He heard some noise of striking of iron object on stone. Thereafter he suspected something. He went home and took a torch with him. He knocked on the door of Kailash Bhagat

and told about hearing the noise to Kailash and the other persons in his house including PW 3 Prashant Bhagat who is the son of Kailash Bhagat. Thereafter PW 2 Sunil along with PW 3 Prashant Bhagat, Kailash Bhagat and others came out of their house. They also again heard some noise after coming out of the house. Therefore, Sunil, Kailash, Prashant and Nitin went towards the direction from where the noise was coming. They saw one person (appellant) running away towards the water tank which was at a distance of 5 feet from them. They followed him and asked him who is he? The appellant raised chopper towards them while he was running. The appellant while running, fell down 2 to 3 times. Therefore, the appellant started to walk slowly. Lastly, the appellant fell down. In the light of torch, they saw that there was injury on the left leg of the appellant. Sunil then asked the name of the appellant. He gave his name as Samir Das. Sunil asked the appellant why he was running? Thereupon, the appellant told him that there is friendship between him and the wife of one person and he had killed the husband-Robin Mandal of the said lady. Sunil then asked Kailash and Nitin to wait near the appellant and he and PW 3 Prashant went towards the place where Robin Mandal

was killed by the appellant as told by the appellant to them. They went towards the place from where they had seen the appellant come running. Sunil saw one person lying on the ground. The neck was almost completely cut. Sunil saw this in the light of torch. There was no movement by the injured person who was lying on the ground. They saw one bag lying near the body. The said place was at a distance of 100 to 150 steps from their huts. They noticed that the appellant was also injured. Thereafter they brought the appellant Samir Das near the water tank from that place. Thereafter Sunil and Prashant went to Kurar Police Station. Sunil then narrated all the facts to the police. Police noted the same and registered F.I.R. Thereafter investigation commenced. After completion of investigation, the charge sheet came to be filed.

3 Charge came to be framed against the appellant under Section 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. As can be seen from the cross-examination of the witnesses, the further

defence of the appellant is that a tiger had attacked deceased Robin Mandal due to which, Robin Mandal died. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that there is no merit in the appeal.

5 There is no eye witness in the present case and the prosecution case is entirely based on circumstantial evidence. It is well settled that in the case where the evidence is of circumstantial nature, the circumstances from which conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent with the hypothesis of the guilt of the accused. The

circumstances should be of a conclusive nature and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probabilities, the act must have been done by the accused. This is settled by the Supreme Court in ***Hanumant Vs. State of Madhya Pradesh***¹. This case has been uniformly followed and applied in a large number of cases which rest on circumstantial evidence alone. Keeping these principles in mind we have evaluated the evidence and for the below mentioned reasons, we are of the opinion that in the present case, it can be said that all the links in the chain are complete. The chain of circumstances proved by the prosecution in the present case, excludes the possibility of innocence of the appellant and in fact only points out to his guilt.

6 The circumstances against the appellant are as under:

¹ 1952 AIR (SC) 343

- (1) At midnight the appellant was seen running away with chopper in his hand and dead body of Robin Mandal was seen lying nearby;
- (2) When PW No. 2 Sunil and PW 3 Prashant tried to stop the appellant and tried to ask him who is he?, the appellant raised chopper towards them;
- (3) Extra-judicial confession made by the appellant to PW 2 Sunil and PW 3 Prashant;
- (4) Motive;
- (5) Medical evidence;
- (6) Shirt of the appellant was stained with blood of 'B' group.

7 PW 2 Sunil and PW 3 Prashant have deposed in relation to the first circumstance i.e. the appellant was seen running away with chopper in his hand and dead body of Robin Mandal was found nearby. Sunil has stated that he was residing in Adivasi Pada in Kurar village at Malad, Mumbai. There was electricity supply to Adivasi Pada. He knew Prashant Bhagat (PW 3), Kailas Bhagat and Nitin Bhagat as they were residing in the hut adjacent to his hut. On 28.3.2006 at about 7.30 p.m. Sunil returned home. Thereafter he watched movie on television till 12 midnight. Thereafter he came out of the house for passing urine. When he went 7 to 8 steps ahead, he

heard noise of striking of iron object on stone, hence, he suspected something. He returned home and took a torch and he knocked on the door of house of Kailash. Sunil told him about the noise. Thereafter Prashant (PW 3), Kailash and Nitin came out of the house. Then they as well as Sunil again heard some noise. Therefore, Sunil, Kailash, Prashant (PW 3) and Nitin went towards the direction from where the noise was coming. They then saw one person running away towards the water tank which was at a distance of 5 feet from them. They followed that person and called out to him and asked him who is he? The said person while running raised chopper in his hand towards them. Thereafter the said person fell down 2 to 3 times. Thereafter the person started walking slowly. Lastly, the said person fell down. PW 2 Sunil saw in the light of torch that the person had sustained injury on his left leg. He asked the name of the person. The person gave his name as Samir Das. Sunil has identified the said person as the appellant. Sunil asked the appellant why he was running? Thereupon the appellant replied that there was friendship between him and the wife of one person i.e. Robin Mandal, therefore he had killed Robin Mandal. Sunil then asked Kailash and Nitin to wait

near the appellant and he and Prashant went in the direction where the appellant had told them that he had killed Robin Mandal. When they went to the spot from where they had seen the appellant come running, they saw that one person was lying in an injured condition and the neck of the person was completely cut. The said place was at a distance of 100 to 150 steps from the hut of Sunil and PW 3 Prashant. The injured person did not make any movement. Then Sunil and Prashant again came to the place where the appellant was. They saw one bag and chopper lying near the appellant. Thereafter Sunil and Prashant went to Kurar Police Station. Sunil then lodged FIR. Nothing has been elicited in the cross-examination of PW 2 Sunil so as to disbelieve his testimony. The evidence of PW 3 Prashant is on the same lines as that of Sunil.

8 Thus, the evidence of PW 2 Sunil and PW 3 Prashant shows that at about midnight between 28.3.2006 and 29.3.2006 the appellant was seen by these two witnesses running away with chopper in his hand and a few feet away Robin Mandal was lying dead with injuries on his person.

9 The next circumstance against the appellant is extra-judicial confession. PW 2 Sunil and PW 3 Prashant have deposed on this aspect. Both these witnesses have stated that when they accosted the appellant and asked him why he was running away, the appellant stated that "there was friendship between him and the wife of deceased Robin Mandal, hence, he had killed Robin Mandal".

10 In ***Rao Shiv Bahadur Singh Vs. State of Vindhya Pradesh***² and ***Maghar Singh Vs. State of Punjab***³ the Supreme Court held that "the evidence in the form of extra-judicial 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 evidence of the witness before whom the confession is made is found to be trustworthy and the Court is satisfied that the confession was true and voluntarily made, then conviction can be based on such evidence alone".

In ***Narayan Singh Vs. State of M.P.***⁴ the Supreme

2 AIR 1954 SC 322

3 AIR 1975 SC 1320

4 1985 Cri.L.J.1862

Court cautioned that "it is not open to the court trying the criminal case to start with a presumption that extra judicial confession is always a weak type of evidence".

In ***Kishore Chand Vs. State of H.P.***⁵ the Supreme Court held that "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 any falsity".

The Supreme Court in ***Madan Gopal Kakkad Vs. Naval Dubey***⁶ held that "the extra-judicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration".

11 There is neither any rule of law nor of prudence that evidence furnished by extra-judicial confession cannot be relied upon unless corroborated by some other credible evidence. However, even otherwise in the present case the extra judicial

5 1990 Cri.L.J.2289

6 [1992] 2 SCR 921

confession is amply corroborated. The appellant stated that he had killed Robin Mandal and the dead body of Robin Mandal was found lying near by with injuries on his person which were consistent with assault by chopper. Moreover, nothing has been elicited in the cross-examination of PW 2 Sunil and PW 3 Prashant so as to cause us to disbelieve their evidence wherein they have stated that extra-judicial confession was made by the appellant to them wherein the appellant has stated that "he had killed Robin Mandal".

12 The prosecution has also proved the motive for the appellant to commit the murder of Robin Mandal through the evidence of PW 2 Sunil and PW 3 Prashant. Sunil has stated that when they questioned the appellant regarding why the appellant was running away, the appellant told them that as there was friendship between him and the wife of Robin Mandal, he had killed Robin Mandal. The evidence of PW 3 Prashant is on similar lines as that of PW 2 Sunil.

13 It is pertinent to note the conduct of the appellant. PW 2 Sunil and PW 3 Prashant have stated that they saw the

appellant running away hence, they questioned the appellant who he was, thereupon the appellant raised chopper towards them which was in his hand. This conduct on the part of the appellant also militates against his innocence.

14 It is the prosecution case that the appellant assaulted deceased Robin Mandal with chopper and caused his death. PW 4 Dr. Ghotekar conducted the post-mortem on the dead body of Robin Mandal. During the post-mortem, he found 11 injuries on his person which were in the nature of chop-wounds and incised wounds. Out of them, six injuries were on the neck and three injuries were on the occipital region, one injury was on the chin and the last injury was on the maxillary region.

On internal examination, Dr. Ghotekar found cut fracture over posterior cranial fossa region. He also found that meninges were clean cut at posterior cranial fossa. On dissection of neck, he found that strape muscles of left side of neck, left sternocleido mastoid muscle, left jugular vein, left carotid artery are clean cut, thyroid cartilage clean cut in mid-line with extravasation of blood in underlying and surrounding

tissue.

15 At this stage, we would like to state that the defence of the appellant as revealed from the cross-examination of the witnesses is that a tiger came and assaulted the deceased, due to which, the deceased Robin Mandal died. Looking to the medical evidence specially the fact that out of 11 injuries sustained by deceased Robin Mandal, 4 were chop wounds, the defence of the appellant does not at all seem to be probable. Furnishing false explanation by the appellant adds an additional link in the chain of circumstances against the appellant.

16 The last circumstance is that clothes of the appellant seized by PW 5 Police Constable Tadví were sent to the C.A. The shirt of the appellant had blood stains of 'B' group. The C.A. report Exh. 25 shows that the blood group of the deceased was 'B'. The C.A. report Exh. 26 shows that the blood group of the appellant was 'AB'. Thus, finding of blood of 'B' group on the clothes of the appellant is an additional circumstance in the chain of circumstances against the appellant. It is pertinent to

note that the appellant has not furnished any explanation for the presence of blood stains of `B' group on his shirt.

17 Looking to all the circumstances proved by the prosecution and keeping in mind the principles which we have stated in para 5 above, we are of the opinion that in the present case, it can be said that all the links in the chain of circumstances, are complete and the chain of circumstances only points out to the guilt of the appellant.

18 Thus, looking to the evidence on record, we find that there is no merit in the appeal and the same is dismissed.

19 Office to communicate this order to the appellant and the concerned Jail Superintendent.

20 We quantify legal fees to be paid to Advocate Ms. Rohini Dandekar by the High Court Legal Services Committee at Rs. 5000/-.

[A.S.GADKARI, J.]

[SMT. V.K.TAHILRAMANI, J.]