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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2815 of 1999**

Sawan Ram S/o Ghurnu Korwa, aged 40 years, Agriculturist, Resident of village Tamiya, PS Sanna, Tahsil Bagicha, District Jashpurnagar (Madhya Pradesh) (Now Chhattisgarh)

---- Appellant**Versus**

State of Madhya Pradesh (Now Chhattisgarh) Through Police Station Sanna, Tahsil Bagicha, District Jashpur Nagar (Madhya Pradesh) (Now Chhattisgarh).

---- Respondent

For Appellant	: Shri Shrawan Kumar Chandel, Advocate.
For Respondent/State	: Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board**Per Deepak Gupta, Chief Justice****28/11/2016**

1. This appeal by the convicted accused/Appellant is directed against the judgment dated 29.07.1999 delivered by the learned Additional Sessions Judge, Jashpurnagar, in Sessions Trial No. 41 of 1999 whereby he convicted the accused/Appellant under Section 302 IPC for having committed murder of his wife-Munni Bai and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs. 2000/-. In default of payment of fine, the Appellant was required to undergo further simple imprisonment for 5 years.

2. The prosecution story, briefly stated is that on 05.01.1989 at 13:05 hours, Sahrang Ram Uraon (PW-5) (the informant) came to the police station and lodged a report (merg intimation) to the effect that on 04.01.1989 the accused-Sawan Ram Korva had come to his house and informed him that he had killed his wife Munni Bai (sister of the informant). The informant went to the house of the accused and verified that his sister was lying dead in the kitchen and came back. Next day, the report was lodged. On the basis of the same, FIR (Exhibit

P/5) was registered. Thereafter, the body of the deceased was subjected to postmortem and the report in this regard in Exhibit P/11. Memorandum statement of the accused-Appellant was recorded which is Exhibit P/1 and on the basis of this memorandum statement, one axe stated to have been used by the accused to kill his wife, was recovered. This axe was also sent to the FSL for examination which is stated to contain traces of blood.

3. On the basis of investigation, charge sheet under Section 173 CrPC was filed and the accused was charged under Section 302 IPC for having committed murder of his wife-Munni Bai. After the trial, he has been convicted and sentenced as aforesaid. Hence this appeal.

4. It is urged by learned counsel for the Appellant that the conviction of the accused is mainly based on the extra-judicial confession. Shri Chandel submits that this extra-judicial confession, especially a retracted extra-judicial confession is a very weak piece of evidence and conviction cannot be based on the same. There is no evidence to connect the accused with the commission of the alleged offence.

5. On the other hand, Ms. Madhunisha Singh, learned Panel Lawyer for the State submits that the conviction is not based only on the extra-judicial confession but it is also based on the recoveries of incriminating articles, viz. axe used to kill the deceased and also the fact that the dead body was found inside the kitchen of the house of the accused and he could give no explanation for the same. The learned Trial Court was fully justified in convicting the accused.

6. We have given our careful consideration to the evidence on record and the facts of the case.

7. As far as the extra-judicial confession is concerned, the law is well established that an extra-judicial confession is a weak type of evidence. The Courts, as a matter of prudence normally look for corroboration when the prosecution story is based on extra-judicial confession. No doubt, if the evidence

of extra-judicial confessions is reliable and trustworthy and beyond reproach, the same can be relied upon and conviction can be founded thereupon. However, the Court has to ensure that confession comes from an unpolluted source and is free from any doubt. If there is any chance of the sources of extra-judicial confession being doubtful, then no reliance can be made upon the same. In this regard, reference can be made to the judgments of the Apex Court in *Balwinder Singh v. State of Punjab* {AIR 1996 SC 607}, *Devku Bhikha v. State of Gujarat* {(1996) 11 SCC 641}, *Jaspal Singh @ Pali v. State of Punjab* {(1997) 1 SCC 510} and *State of U.P. v. M.K. Anthony* {AIR 1985 SC 48}.

8. As far as the extra-judicial confession in this case is concerned, that has been made to Sahrangram Uraon (PW-5) brother of the deceased and brother-in-law of the accused. According to him, at about 12 noon on 04.01.1989, the accused came to his house and informed him that he had killed Munni Bai, sister of this witness. Thereafter, PW-5 went to the village of the Accused which is at a distance of about 3 KM from his own village. Now, if the distance between the two villages is only 3 KM, that means by 2 or 2:30 pm, this witness would be back to his own village after verifying that his sister was dead. There is no explanation in the statement of PW-5 or in the statement of any other witness why he could not go to the police station to lodge the report on the same day. The report has been lodged after 24 hours. It is true that mere delay in lodging of the FIR by itself is not a sufficient ground to acquit the accused. However, when there is unexplained delay in lodging the FIR, then the Court has to scrutinize the prosecution witness with greater care and caution. The reason is that if there is a chance of the witnesses having concocted a story, the evidence of such witness becomes doubtful.

9. We are of the considered view that since no explanation was given with regard to the delay in lodging the FIR, it will be very difficult to rely upon the extra-judicial confession of the accused.

10. Normal human conduct would have been that Sahrangram Uraon (PW-5) would have gone to the police station immediately. Even assuming that the witness (PW-5) was a poor man and a rustic villager, then also he could have gone to the village Kotwar or to the Sarpanch to make such a complaint. There is no evidence in this regard.

11. Assuming that the extra-judicial confession has been made, the law is well settled that there must be corroboration to the extra-judicial confession. In this regard, the prosecution mainly relies on the memorandum statement of Thakur Ram Korwa (PW-1). The opening part of the memorandum statement whereby the Appellant has virtually confessed to killing his wife, is inadmissible in evidence because it is hit by Section 25 of the Evidence Act. The only portion of the statement which may be admissible as evidence is with regard to the recovery of the axe which is alleged to have been used by the accused in killing of his wife.

12. The witness to the recovery of axe is Thakur Ram Korwa (PW-1). According to him, after the death of Munni Bai, police came to the village. Then the police questioned accused-Sawan Ram Korwa about the axe being used in the offence and the accused told the police that he had hidden the axe in the house of his brother-in-law, Sahrang Ram Korwa (PW-5). Thereafter, the accused took the police to the house of PW-5 and from there, he took out the axe and memorandum (Exhibit P/1) was prepared.

13. Paltu Singh (PW-7) is the Investigating Officer who states that he had recorded the memorandum statement (Exhibit P/1). He further states that the accused produced one axe which was recovered vide Exhibit P/2. The statement of the Investigating Officer is totally silent with regard to the manner of recovery of the axe. It is silent as to from where the axe was recovered. As far as statement of Thakur Ram Korwa (PW-1) is concerned, he states that the police asked the accused about the axe used in the offence which means that the

police already knew that an axe has been used. There is no explanation how the police officials came to know that an axe has been used to commit the crime in question. Section 27 of the Evidence Act will apply only when there is a discovery of a new fact. The fact may be a tangible fact or an intangible fact. But it must definitely be a new fact. If the fact is already known to the police, then there is no discovery of any new fact.

14. Furthermore, the story of Thakur Ram Korwa (PW-1) cannot be believed because of other contradictions. Sahrangram Uraon (PW-5) in his statement has stated that when the accused made a confessional statement, he had produced a knife and a *hansiya* (sickle). There is no mention of an axe. The accused allegedly confessed that he had killed Munni Bai and produced his weapon of offence i.e. *hansiya* and knife. There is no mention of any axe. The prosecution has failed to show how the axe came into the scene.

15. In the statement of the Investigating Officer (PW-7), there is no mention that after the axe was seized, it was sealed. There is no seal impression produced on record. Therefore, it is not proved that the axe was sent to the FSL in the same condition in which it was seized. Lastly, the FSL report only states that there was blood on the axe. There is no mention of human blood much less mention of any blood grouping. Therefore, we cannot conclude that the prosecution has proved that the axe was recovered at the instance of the accused. Even if we were to hold that it was recovered at the instance of the accused, there is no direct evidence to link the same with commission of the offence.

16. Lastly, the contention with regard to the dead body of the deceased being found in the house of the Appellant is concerned, there is no doubt that Munni Bai was murdered. There is also no doubt that she was murdered in the house of the Appellant, but that does not by itself attract the provisions of Section 106 of the Evidence Act. It would have been a different matter if it was a locked room

where both husband and wife had gone together at night and the deceased was found dead in the morning. The deceased was found dead in the kitchen of the house which was an open place. There is material on record to show that the brother of the accused was mentally unsound and he was at times violent. The possibility of the murder having been committed by him can also not be ruled out.

17. The law with regard to circumstantial evidence is well settled. In a case where the prosecution relies upon the circumstantial evidence, it must not only prove the circumstances but should link them in such a fashion so as to form an un-ending chain leading to only one unerring conclusion i.e. the guilt of the accused. But if there is any chance of the accused being innocent or the crime having been committed by some other person, then the accused has to be given the benefit of doubt and on the basis of circumstantial evidence, he cannot be convicted.

18. In the present case, though, the finger of suspicion may point to the accused, we can only repeat that no amount of suspicion can replace proof and therefore, we have no option but to acquit the accused of the charges.

19. In view of the above discussion, we are clearly of the view that the learned Trial Court totally misdirected itself in convicting the accused/Appellant. The judgment dated 29.07.1999 passed in Sessions Trial No. 41 of 1999 by the learned Additional Sessions Judge, Jashpurnagar, is set aside and the accused/Appellant is acquitted of the charge. The accused/Appellant is in jail. He be released forthwith unless required in any other case.

20. The appeal is allowed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE