

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 301 of 2009

- Maheshwar Lal Jatwar, 19 years, S/o Ganesh Ram R/o Khairjhhiti O.P. Hasoud, P.S. Jaijaipur, District-Janjgir-Champa (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through District Magistrate, Distt.-Janjgir-Champa (CG)

---- Respondent

For Appellant	:	Shri Sumit Singh, Advocate.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board By Justice Pritinker Diwaker

19/09/2017

This appeal arises out of the judgment of conviction and order of sentence dated 20.2.2009 passed by the Additional Sessions Judge, Sakti, Janjgir-Champa in ST No.84/2008 convicting the appellant under Sections 302 & 201 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.500/- and RI for 3 years and fine of Rs.100/- with default stipulations respectively.

02. As per prosecution case, the appellant was having affair with Ku. Laxmi Sidar (PW-3) and on 28.2.2008 he entered the house of Ku. Laxmi, however, he was seen by deceased Gopiram Chandra. The appellant asked Gopiram not to disclose the fact of his (appellant) meeting Ku. Laxmi, however, Gopiram did not agree to the same and

then the appellant took him towards river, gave him a kick blow on his rib region as a result of which Gopiram fell on a stone. It is said that thereafter the appellant pressed his neck resulting in his death and then threw the dead body in a pit of the nearby stone quarry. On 29.2.2008 dead body of Gopiram Chandra was found in a pit and immediately thereafter unnumbered merg Ex.P/29 and numbered merg Ex.P/30 were recorded at the instance of Sampatram (PW-11). Inquest over the dead body was conducted vide Ex.P/6 on 29.2.2008 and thereafter the dead body was sent for postmortem which was conducted on the same day by PW-9 Dr. Saroj Kachchhap vide Ex.P/17 who noticed multiple abrasions and contusions on his body over face, cheek, neck, ear, chin, chest, knee caused by hard and rough object as also lacerated wound over right frontal region of forehead by hard and rough object. He also noticed fracture of right fronto-parietal bone and 4th & 5th rib and trachea was cut. In his opinion the cause of death was haemorrhagic shock and respiratory failure due to homicidal injury over neck, fracture of trachea, fracture of right front-parietal bone of scalp and injury of lung, and that the death was homicidal in nature. Unnumbered FIR (Ex.P/25) was registered after receipt of PM report and thereafter numbered FIR (Ex.P/26) was registered against an unknown person under Section 302 of IPC. On 4.3.2008 memorandum of the appellant was recorded vide Ex.P/8 wherein he has stated as to how he killed the deceased and got his jeans and vest seized vide Ex.P/11 as also two stones, each weighing about 1 ½ kg, stained with blood vide Ex.P/12. After filing of the charge sheet, the trial Judge framed charges against the appellant under Sections 302 & 201 of IPC.

03. So as to hold the accused/appellant guilty, the prosecution examined 26 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence, he examined two witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellant submits as under:

(i) that there is no eyewitness account to the incident and the conviction is based on circumstantial evidence which is very weak in nature and further the chain of circumstantial evidence is also not complete.

(ii) the only piece of evidence against the appellant which has been relied upon by the trial Court is the so-called extrajudicial confession of the appellant before some of the villagers namely PW-5 Paras Ram, PW-6 Birichh Ram, PW-7 Gurudayal, PW-8 Hemdas Mahant, PW-11 Sampat Ram, PW-12 Keshav Prasad, PW-13 Sunder Lal Chandra and PW-15 Jati Ram. Merely on the basis of alleged extrajudicial confession the appellant cannot be convicted unless there is some other corroborative piece of evidence against him. Moreover, it has come in the evidence of the prosecution witnesses that these witnesses have inimical relation with the appellant and therefore, the so-called extra-judicial confession does not appear to be voluntary and

truthful.

(iii) though certain articles have been seized at the instance of the appellant but in absence of FSL or serological report, the same is of no consequence.

(iv) that witnesses to the extrajudicial are not reliable. Had the appellant made any such confession before them, this fact would have reflected in the inquest because at the time of inquest the witnesses to extrajudicial confession were present and likewise it would also have reflected in the FIR registered on 2.3.2008 but it is not so.

He has placed reliance on the judgment of the Supreme Court in the matter of ***State of Haryana Vs. Rajinder Singh, (1996) 8 SCC 77.***

06. On the other hand, State counsel supporting the impugned judgment submits as under:

(i) that present is a case where extrajudicial confession has been made by the appellant before village panchayat and as many as eight witnesses to the said confession have duly supported the prosecution case.

(ii) that there is no evidence that the witnesses to extrajudicial confession had inimical relation with the appellant and that is why they have falsely implicated him.

(iii) that up till the inquest proceedings conducted on 29.2.2008 no extrajudicial confession was made by the appellant and therefore, the question of recording the same in the inquest does not arise. Likewise, FIR was registered against unknown person and till then also it was not within the knowledge of the police that any such confessional statement has been made by the appellant before the village

panchayat and in these circumstances, there was no occasion for the police to mention the name of the appellant in the FIR.

(iv) that extrajudicial confession of the appellant before the village panchayat corresponds with the injuries sustained by the deceased which have been duly proved by the autopsy surgeon (PW-9).

07. Heard counsel for the respective parties and perused the material on record.

08. PW-5 Parasram is a witness of village panchayat and extrajudicial confession made by the appellant in the village panchayat. He has stated that he knew the appellant and the deceased. To get the actual culprit a meeting of village panchayat was called where it was informed by Gopiram Shrivastava (PW-2) that on the date of incident he was sleeping in the house of Garib Singh Sidar (PW-4), who is father of Ku. Laxmi Bai (PW-3), he saw the appellant entering the house of Garib Singh followed by deceased Gopiram Chandra and then the appellant taking the deceased along with him out of the house. He has stated that thereafter, when the appellant was asked about the matter, he confessed killing of Gopiram Chandra. Thereafter information was given to the police.

09. PW-6 Birichh Ram is also a witness of village panchayat and extrajudicial confession of the appellant. He has stated that on being asked by the police to trace the culprit at their level they convened a village meeting where Gopiram Shrivastava (PW-2) disclosed that on the date of incident while he was sleeping in the house of Garib Singh (PW-4), he saw the appellant entering the house of Garib Singh and when it was objected by deceased Gopiram Chandra, the appellant

took him by neck outside the house. This witness has stated that on being asked in the village meeting the appellant confessed that it is he who has killed the deceased and he also assigned the reason by saying that he had asked the deceased not to disclose the fact of his meeting Laxmi Bai (PW-3) but he did not agree and therefore, he killed him.

10. PW-7 Gurudayal is also a witness of extrajudicial confession. He has stated that after cremation of the deceased, the villagers were called by the police and asked to enquire at their level about the culprit and then a village meeting was convened where it was disclosed by Gopiram that he had seen the appellant entering the house of Garib Singh and there the deceased also went and then he was taken away by the appellant towards the river side. This witness has stated that thereafter the appellant on being asked informed the village panchayat that it is he who killed the deceased.

11. Yet another witness of extrajudicial confession is PW-8 Hemdas Mahant who too has categorically stated that in the village panchayat the appellant confessed that he had killed the deceased. He has further stated that another question was put to the appellant as to with whose help he (appellant) killed the deceased and then he replied that he alone killed the deceased.

12. PW-11 Sampatram Chandra, father of the deceased, has stated that in the village panchayat the appellant confessed to have killed Gopiram Chandra as he did not agree with him, by first giving him a kick blow and then strangulating him. PW-12 Keshav Prasad, another witness of extrajudicial confession has stated that in the village

panchayat the appellant confessed that first he took the deceased with him towards river and there killed him. PW-13 Sunderlal Chandra is also a witness of extrajudicial confession. He has stated that the appellant confessed that as his entry in the house of Laxmi Bai was seen by deceased Gopiram who threatened him to disclose the same in the village, he killed Gopiram by giving him a kick blow and thereafter strangulating him. PW-15 Jati Ram is also a witness of extrajudicial confession. While supporting the prosecution case he has stated that in the village panchayat the appellant confessed commission of murder of Gopiram Chandra.

13. PW-1 Nonibai, wife of the deceased is a hearsay witness. PW-2 Gopiram Shrivastava has turned hostile. However, he has admitted the fact that on the date of incident he was sleeping in the house of Garib Singh (PW-4). PW-3 Ku. Laxmi Sarda has turned hostile. She has also admitted the fact that on the date of incident Gopiram Shrivastava (PW-2) was sleeping in her house. PW-4 Garib Singh, father of PW-3, has also turned hostile. PW-9 Dr. Saroj Kachchhap conducted postmortem on the body of deceased on 29.2.2008 vide Ex.P/17 and noticed multiple abrasions and contusions on his body over face, cheek, neck, ear, chin, chest, knee caused by hard and rough object as also lacerated wound over right frontal region of forehead by hard and rough object. He also noticed fracture of right fronto-parietal bone and 4th & 5th rib and trachea was cut. In his opinion the cause of death was haemorrhagic shock and respiratory failure due to homicidal injury over neck, fracture of trachea, fracture of right front-parietal bone of scalp and injury of lung, and that the death was homicidal in nature.

PW-10 Awadh Ram Sidar, Patwari, prepared the spot map Ex.P/14. PW-14 SP Xaxa recorded merg intimation Ex.P/23. PW-17 Vijay Tiwari, PW-22 HK Vaishnav, PW-23 R. Vivek Singh and PW-24 R. Komal Chandra, police personnel, assisted in the investigation. PW-18 Dinesh Chandra, PW-20 Budhram Bhardwaj and PW-21 Kartikram are witnesses to identification proceeding conducted in respect of chain vide Ex.P/21. Though they have not been cited as witnesses of village panchayat by the prosecution but in the Court they have stated that they too were present in the said meeting and no such confession was made by the appellant. PW-25 Awadh Ram witness to identification proceeding of chain vide Ex.P/21 has turned hostile. PW-26 Shankar Sharma, investigating officer, has duly supported the prosecution case.

14. The appellant has examined himself as DW-1 and stated that on the date of incident he was busy in the election of forest committee from morning till 6 pm and thereafter returned home, took his meals at 7-8 pm and slept thereafter at his home. He has further stated that as there are two groups in the village, he has been falsely implicated by the members of the opposite group. He has stated that he had good relations with the deceased. DW-2 Ramesh Jaiswal has stated that on the date of incident the deceased had consumed excessive liquor and while he was returning to his house he died due to fall into the stone quarry. He has further stated that the appellant has been falsely implicated.

15. On the memorandum of the appellant recorded on 4.3.2008 (Ex.P/8), his jeans and vest as well as two stones, each weighing about 1 ½ kg, stained with blood were seized vide Ex. P/11 & P/12.

However, there is no FSL report on record in respect of these articles.

16. Admittedly, there is no direct evidence against the appellant to show his complicity in the crime in question and his conviction rests upon circumstantial evidence, main being the extrajudicial confession made before the village panchayat and recovery of certain incriminating articles at his instance.

17. In the matter of ***Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210*** the Supreme Court while dealing with circumstantial evidence observed as under:

“11. In Hanumant Govind Nargundkar v. State of M.P. [AIR 1952 SC 343], which is one of the earliest decisions on the subject, this court observed as under:

“10. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency 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 probability the act must have been done by the accused.”

12. In Padala Veera Reddy v. State of A.P. [(1989) Supp (2) SCC 706], this court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. □

13. [In Sharad Birdhichand Sarda v. State of Maharashtra \[\(1984\) 4 SCC 116\]](#), it was held that the onus was on the prosecution to prove that the chain is complete and falsity or untenability of the defence set up by the accused cannot be made basis for ignoring serious infirmity or lacuna in the prosecution case. The Court then proceeded to indicate the conditions which must be fully established before conviction can be based on circumstantial evidence. These are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) 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 must show that in all human probability the act must have been done by the accused. □

26. The next thing which is to be seen is whether the evidence relating to the recovery of clothes of the appellant and the half blade, allegedly used for commission of crime, is credible and could be relied on for proving the charge of culpable homicide against the appellant. In this context, it is important to note that the prosecution did not produce any document containing the recording of statement allegedly made by the appellant expressing his desire to facilitate recovery of the clothes and half blade. The prosecution case that the accused volunteered to give information and took the police for recovery of the clothes, half blade and purchase of handkerchief is highly suspect. It has not been explained as to why the appellant gave information in piecemeal on three dates i.e. 3.10.1994, 5.10.1994 and 6.10.1994. Room No.45 of "Ganesh Bhuvan" from which the clothes are said to have been recovered was found to be unlocked premises which could be accessed by anyone. The prosecution could not explain as to how the room allegedly belonging to the appellant could be without any lock. The absence of any habitation in the room also cast serious doubt on the genuineness and bonafides of recovery of clothes. The recovery of half blade from the road side beneath the wooden board in front of Ganesh Bhuvan is also not convincing. Undisputedly, the place from which half blade is said to have been recovered is an open place and everybody had access to the site from where the blade is said to have been recovered. It is, therefore, difficult to believe the prosecution theory regarding recovery of the half blade. The credibility of the evidence relating to recovery is substantially dented by the fact that even though as per the Chemical Examiners Report the blood stains found on the shirt, pant and half blade were those of human blood, the same could not be linked with the blood of the deceased. Unfortunately, the learned Additional Sessions Judge and High Court overlooked this serious lacuna in the prosecution story and concluded that the presence of human blood stains on the cloths of the accused and half blade were sufficient to link him with the murder."

18. Before advertng to the facts and evidence of the present case, it would be apposite to consider the legal position in respect of the extrajudicial confession. In the matter of ***State of A.P. Vs. Kanda Gopaludu, (2005) 13 SCC 116***, the Supreme Court observed as under:

“3. The High Court recorded the acquittal on the ground that PW.1 and PW.2 before whom the accused made extra-judicial confession are strangers and there is no reason for the respondent to make the extra-judicial confession before PW.1, PW.2 and PW.3. The High Court also found that the statements of PWs. 1 and 2 were full of contradiction and artificial. On this ground the accused was acquitted, however, the High Court has not assigned any reason with regard to the alleged contradiction between the statements of PW.1 and PW.2 and the acquittal is not supported at all. It is now well established principle of law that the judicial decision is based on reasons. We have been taken through the evidence of PWs.1, 2 and 3 before whom the accused made extra-judicial confession. It is now established principle of law that extra-judicial confession is admissible if it inspired confidence ' and made voluntarily. The High Court reasoning that the accused has made a confession statement before a stranger is totally perverse. The evidence on record shows that PW.1 is the Sarpanch of the village, PW.2 and PW.3 are also ward members of the village gram panchayat.

4. It is the case of the prosecution that the accused had come to the house of PW.1 where PWs.2 and 3 were sitting together and chatting and he had made extra-judicial confession before them voluntarily. It is also the evidence on record that PWs.1 and 2 went to the Police Station and lodged an FIR while PW.3 was with the accused in the house of PW.1. It is also in the evidence on record that PW.9 arrested the accused from the house of PW.1.

5. PWs.1, 2 and 3 were subjected to lengthy cross

-examination. Not even a suggestion was put to the witnesses that the confession was tainted and non-voluntary or that it was obtained by coercion, inducement or promise of favour. In the case of *Gura Sinah v. State of Rajasthan (2001) 2 SCC 205*, this Court held in paragraph 6 at SCC p. 212 as under:

'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*, : 1954CriLJ910 this Court again in *Maghar Singh v. State of Punjab*, : AIR1975SC1320 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.*, : 1985CriLJ1862 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. The retraction of extrajudicial confession which is a usual phenomenon in criminal cases would be itself not weaken the case of the prosecution based upon such a confession. In *Kishore Chand v. State of H.P.*, : 1990CriLJ2289 this Court held that an unambiguous extrajudicial 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. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not 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. The Court is retired to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to

whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinised. To the same effect is the judgment in *Baldev Raj v. State of Haryana*, : 1990CriLJ2643 . After referring to the judgment in *Piara Singh v. State of Punjab*, : 1977CriLJ1941 this Court in *Madan Gopal Kakkad v. Naval Dubey*, : [1992]2SCR921 held that the extrajudicial 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.'

19. In the matter of ***Sahadevan and another Vs. State of Tamil Nadu***, (2012) 6 SCC 403, the Supreme Court held as under:

“14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

15. Now, we may examine some judgments of this Court dealing with this aspect.

15.1. [In Balwinder Singh v. State of Punjab](#) [1995 Supp. (4) SCC 259], this Court stated the principle that:

“10. An extra-judicial confession, by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.”

15.2 [In Pakkirisamy v. State of T.N.](#) [(1997) 8 SCC 158], the Court held that:

“8. ...It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.”

15.3. Again in [Kavita v. State of T.N.](#) [(1998) 6 SCC 108], the Court stated the dictum that:

“4. There is no doubt that conviction can be based on extrajudicial confession, but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon veracity of the witnesses to whom it is made.”

15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in the case of [State of Rajasthan v. Raja Ram](#) [(2003) 8 SCC 180] stated the principle that:

“19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.”

The Court, further expressed the view that:

“19. ...Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused...”

15.5. In the case of [Aloke Nath Dutta v. State of W.B.](#) [(2007) 12 SCC 230], the Court, while holding the placing of reliance on extra-judicial confession by the lower courts in absence of other corroborating material, as unjustified, observed:

“87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.

XXX XXX XXX

89. A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof.”

15.6. Accepting the admissibility of the extra-judicial confession, the Court in the case of [Sansar Chand v. State of Rajasthan](#) [(2010) 10 SCC 604] held that :-

“29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide [Thimma and Thimma Raju v. State of Mysore](#), [Mulk Raj v. State of U.P.](#), [Sivakumar v. State](#) (SCC paras 40 and 41 : AIR paras 41 & 42), [Shiva Karam Payaswami Tewari v. State of Maharashtra](#) and [Mohd. Azad v. State of W.B.](#)]

30. In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by [Section 24](#) of the Evidence Act, 1872.”

15.7. Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in the case of [Rameshbhai Chandubhai Rathod v. State of Gujarat](#) [(2009) 5 SCC 740], held as under :

“53. It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no

inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless, the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.”

15.8. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [Ref. [Sk. Yusuf v. State of W.B.](#) [(2011) 11 SCC 754] and [Pancho v. State of Haryana](#) [(2011) 10 SCC 165].

The principles

16. Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.

- i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- ii) It should be made voluntarily and should be truthful.
- iii) It should inspire confidence.
- iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

20. Further, in the case of ***Vijay Shankar Vs. State of Haryana, (2015) 12 SCC 644***, it has been held by the Supreme Court as under:

“Principles in respect of evidentiary value and reliability of extra-judicial confession have been summarized by this Court in *Sahadevan & Anr. vs. State of Tamil Nadu*, (2012) 6 SCC 403, which reads as under:-

- "i. The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution;
- ii. It should be made voluntarily and should be truthful;
- iii. It should inspire confidence;
- iv. An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence;
- v. For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities;
- vi. Such statement essentially has to be proved like any other fact and in accordance with law."

Extra-judicial confession is a weak piece of evidence and the courts are to view it with greater care and caution. For an extra-judicial confession to form the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities. In the case on hand, extra-judicial confession allegedly made to PW-12 does not inspire confidence and cannot form the basis for the conviction.

21. In the present case, the appellant was having affair with PW-3 Ku. Laxmi Sidar, daughter of PW-4 Garib Singh. Indisputably, on the

date of incident PW-2 Gopi Ram Shrivastava, neighbour of PW-4 Garib Singh was sleeping in the house of PW-4. On the date of incident i.e. 28.2.2008 in the night the appellant is said to have entered the house of PW-4 to meet PW-3 Ku. Laxmi Sarda, which was seen by deceased Gopiram Chandra and when the appellant asked him to keep it a secret, Gopiram did not agree to it and then the appellant took him towards river side and killed him by first causing him kick blow and then pressing his neck. Medical report of the deceased also supports the prosecution case according to which there were multiple abrasions and contusions on his body as also lacerated wound over right frontal region of forehead caused by hard and rough object, there was fracture of right fronto-parietal bone and 4th & 5th rib and trachea was cut. According to the autopsy surgeon the cause of death was haemorrhagic shock and respiratory failure due to homicidal injury over neck, fracture of trachea, fracture of right fronto-parietal bone of scalp and injury of lung, and that the death was homicidal in nature. Thus, in view of the un rebutted medical evidence on record, the evidence of DW-2 stands falsified that as the deceased had consumed excessive liquor, he fell down in a pit, sustained some injuries and died as a result thereof.

22. The FIR was registered by the police on 2.3.2008 against unknown person and after registration of the FIR when the police authorities asked the villagers to enquire at their level about the culprit, a panchayat meeting was convened which was attended by number of villagers including the appellant. In this panchayat meeting on being disclosed by PW-2 Gopiram Shrivastava that on the date of incident he had seen the appellant entering the house of PW-4 Garib Singh, which was

followed by deceased Gopiram Chandra and then the appellant took Gopiram Chandra outside the house, when the appellant was questioned in this regard, he confessed to have killed Gopiram Chandra by giving him kick blow and then pressing his neck. The appellant also assigned the reason for such killing.

23. The aforesaid extrajudicial confession was made by the appellant not before one or two witnesses but before the entire panchayat and as many as eight members of that panchayat being PW-5 Paras Ram, PW-6 Birichh Ram, PW-7 Gurudayal, PW-8 Hemdas Mahant, PW-11 Sampat Ram, PW-12 Keshav Prasad, PW-13 Sunder Lal Chandra and PW-15 Jati Ram have duly supported the prosecution case and stated as to under what circumstances the said extrajudicial confession was made by the appellant. So far as inimical relation of these witnesses with the appellant is concerned, but for the statement of the appellant there is absolutely no evidence on record to suggest that the appellant was having inimical relation with the aforesaid witnesses to extrajudicial confession. Merely on the statement of the appellant, who examined himself as defence witness, that these witnesses were inimical to him, on account of village election, it would not be proper to doubt the credibility of these witnesses. In their lengthy cross-examination the defence could not bring out anything to substantiate the plea of false implication of the appellant on account of any enmity or ill-will between these witnesses and the appellant.

24. We are well aware of the legal position in relation to extrajudicial confession that it is a weak piece of evidence and before basing conviction thereon, the Court must ascertain that it inspires confidence

and is free from the suspicion of falsity and further, is corroborated by other prosecution evidence and if it is found to be suffering from material discrepancies or inherent improbabilities, it cannot form the basis of conviction. However, in the present case, upon due consideration of the evidence of the witnesses to extrajudicial confession, we are of the opinion that their evidence inspires confidence and does not suffer from any inherent improbability or material discrepancy. Though PW-2 Gopi Ram Shrivastava has turned hostile and not supported the prosecution case but in the overall facts and circumstances of the case, he appears to have been won over by the defence. However, he (PW-2) too admits his presence in the house of Garib Singh (PW-4) at the time of incident and his presence further stands proved from the evidence of PW-3 Ku. Laxmi Bai, who too has turned hostile.

25. We find no substance in the argument of the appellant that in the FIR there is no reference of extrajudicial confession, it was recorded against unknown person and likewise in the inquest also there is no mention about the extrajudicial confession, which makes the whole prosecution case doubtful. On the face of the record it is clear that the FIR was registered prior to village panchayat where extrajudicial confession was made by the appellant and therefore, the question of reflection of the said fact in the FIR does not arise. Similarly, the inquest on the dead body was conducted on 29.2.2008 and by that time also no village panchayat was held, it was convened only after registration of the FIR i.e. 2.3.2008 and for this reason, there was no occasion to mention the fact of extrajudicial confession in the inquest proceedings and register the FIR against the appellant.

26. This apart, on the memorandum of the appellant recorded on 4.3.2008 (Ex.P/8), his jeans and vest as well as two stones, each weighing about 1 ½ kg, stained with blood were seized vide Ex. P/11 & P/12. Though there is no FSL report on record in respect of these articles, but at the same time it is to be seen that the witness to the memorandum and seizure PW-8 Hemdas Mahat has duly supported the prosecution case on the point of memorandum and seizure and that in his statement under Section 313 of Cr.P.C. the appellant except making bald denial of all the incriminating circumstances has not offered any explanation. In these circumstances, the recovery of aforesaid article can safely be treated as an additional link to the chain of circumstantial evidence.

As regards the judgment cited by the appellant, the same is of no help to him for the reason that it was delivered in the case facts of which are entirely different from the one in hand. Here the extrajudicial confession was made as many as eight independent witnesses, who have duly supported the prosecution case and the defence has failed to make their evidence suspicious or shaky on the ground of any previous enmity or ill-will.

27. Thus, regard being had to the overall evidence, we are of the opinion that the prosecution has been able to prove its case on the basis of circumstantial evidence being extrajudicial confession, recovery of the incriminating article at the instance of the appellant coupled with the medical evidence as also conduct of the appellant, beyond all reasonable doubt and therefore, we have no hesitation in upholding the conviction of the appellant under Sections 302 and 201

of IPC. Resultantly, the appeal fails and is, accordingly, dismissed. As the appellant is reported to be on bail, his bail bonds stand cancelled and he is directed to be taken into custody forthwith to serve out the remaining part of his sentence.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(R.P. Sharma)
Judge