

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1089 of 2008**

- Nehru Bhagat s/o. Sukul Bhagat, aged about 40 years, occupation Agriculture, r/ol village Karwajor, Thana Lailunga, Tahsil Gharghora, District Raigarh (CG)

---- Appellant.**Versus**

- State of Chhattisgarh Through Station House Officer, Thana-Lailunga, Tahsil-Gharghora, Distt.-Raigarh (CG)

For Appellant : Shri R.K. Pali, Advocate.

For Respondent/State : Shri Vaibhav Goverdhan Panel Lawyer.

Hon'ble Shri Pritinker Diwaker,
Hon'ble Shri Ram Prasanna Sharma, JJ

Per P. Diwaker, J**11-10-2017**

This appeal arises out of the judgment of conviction and order of sentence dated 22-10-2008 passed by the First Additional Sessions Judge, Raigarh in Session Trial No. 56 of 2008 convicting the appellant under Sections 302 of IPC and sentencing him to undergo imprisonment for life and fine of Rs.5000/. with default stipulations.

2) In the present case, name of the deceased is Muniram Bhagat. As per prosecution case, on 16-3-2008 accused/appellant and the deceased both fell in an open well of the village, appellant somehow came out from the well, but deceased could not come out. On 19-3-

2008 dead body of the deceased was found in the said well. Merg intimation vide Ex.P/1 was recorded on 19-3-2008 at the instance of PW/1 Sahebram, brother of the deceased. Inquest on the dead body was prepared vide Ex.P/2 on 19-3-2008 and the dead body was sent for postmortem which was conducted on 19-3-2008 vide Ex.P/6 by Dr. Yogeshwar Singh (PW/5). Nowhere it has been stated by the autopsy surgeon that the death was homicidal in nature. After merg inquiry, on 29-3-2008 first information report (Ex.P/7) was registered against the appellant under Sections 302 and 201 of the IPC. After filing of the charge-sheet the trial Court has framed the charge against the appellant under Section 302 of the IPC.

3) So as to hold the accused/appellant guilty, the prosecution has examined seven witnesses. 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 defence, he examined one witness.

4) 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.

5) Counsel for the appellant submits as under:

- (i) that there is no eye-witness account to the incident and the appellant has been convicted solely on the basis of circumstantial evidence.
- (ii) that the nature of circumstantial evidence is

so weak which cannot be made basis for convicting the appellant.

(iii) that the main piece of evidence against the appellant is so called extra judicial confession before PW/3 Raj Kumar, but if the entire statement of PW/3 Raj Kumar is seen, it is apparent that in an open well when both the appellant and deceased fell, while making effort to come out from the well, the appellant appears to have pressed the deceased by his leg and under no circumstances, it can be said that the appellant made extra judicial confession before PW/3 Raj Kumar. Even otherwise, the alleged extra judicial confession of the appellant is not admissible because the same was made under duress and threat and after beating the appellant. Thus, it cannot be said that extra judicial confession was made voluntarily.

6) On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.

7) We have heard counsel for the respective parties and perused the material on record.

8) PW-3 Raj Kumar is a witness before whom extra judicial

confession was allegedly made by the appellant. He has stated that on 16-3-2008 one Baraat (marriage party) had come in the village and the same was staying in Panchayat Bhavan. In the night it came to know that some body had fallen into the well and then one person was taken out from the well with the help of the villager and the said person was accused/appellant. He further stated that after coming out from the well, the appellant had gone to his house. On 19-3-2008 i.e., after three days of the previous incident, dead body of the deceased was found in a well and when the villager had questioned the appellant, he informed them that he and the deceased both fell into the well together and thereafter in the well he pressed the deceased by his leg. In cross examination he has stated that on 18-3-2008 appellant on being asked had informed that he alone fell into the well. This witness has admitted the fact that being Sarpanch of the village, he has influence over the villagers.

9) PW/2 Ram Prasad is a villager and has stated that when the appellant was questioned, he was making different statements regarding murdering the deceased. At one place he (appellant) stated that he had killed the deceased and at another place he denied the same. In cross examination this witness admitted the fact that when the appellant was brought by the villagers, he was beaten by them. PW/1 Sahebram is brother of the deceased at whose instance merger intimation was recorded. PW/4 is the Investigating Officer. PW/5 Dr. Yogeshwar Singh conducted postmortem on the body of the deceased and found the following injuries/symptoms.

i)	Body was in a position of both upper limbs flexed hands open and lower limbs flexed. On right leg with rigor mortis developed, wearing black pant blue check shirt, green banyan and blue underwear body decomposed with goozy skin of palm and sole skin leaving body easily, on opening cloth, injury mark over lower chin on left side, with bleeding from nose, mouth closed, eyes closed, face swollen up and also neck and on turning to back injury mark over left side posterior temporal region, incised like wound deep to skull lateral.
ii)	Body swollen upto abdomen with easily pleash skin. Also wearing a watch in left hand timed 11.15 and stopped. All the clothes are wet.

According to the Doctor, the cause of death of the victim was as a result of drowning in water. He further opined that death occurred more than 50 hours of the examination and death was as a result of asphyxia due to drowning and it was anti-mortem in nature.

10) PW/6 Keshav Prasad Khande is Patwari who prepared the spot map. PW/7 Jakir Khan has been declared hostile. PW/1 Sahebram has stated that the relation between the appellant and deceased was very cordial.

DW/1 Shiv Kumar has also stated that the relation between the appellant and deceased was very cordial and on the second day of the incident i.e., on 17-3-2008 he saw the deceased alive. He has further stated that before questioning the appellant, he was beaten by the villagers and he (this witness) objected and intervened in the said marpeet.

11) Admittedly, there is no direct evidence against the appellant to show his complicity in the crime in question and his conviction solely rests upon his extra-judicial confession allegedly made before PW-3

Rajkumar.

12) Before adverting 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.'

13) 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."

14) Close scrutiny of the evidence makes it clear that there is no legally admissible evidence against the appellant showing the involvement in commission of the offence. The main piece of evidence against the appellant is so called extra judicial confession made before PW/3 Raj Kumar, however, the said evidence is not clinching in nature and if the entire statement of PW/3 Raj Kumar is seen, it cannot be said that the appellant made any extra judicial confession admitting the commission of the offence. The appellant has merely stated that he and deceased both fell into the open well and thereafter he pressed the deceased by his leg. Possibility of pushing the deceased by his leg while making effort to come out from the well cannot be ruled out, moreover there is evidence available on record which shows that before extra judicial confession of the appellant he was beaten by the villagers. In that eventuality, it cannot be said that the extra judicial confession of the appellant was voluntarily and it can be inferred that

the same was made under duress and threat. There is further evidence on record which shows that the relation between the appellant and deceased was very cordial. There is not even a scintilla of evidence as to what was the motive for the appellant to commit murder of the deceased, rather it has come in the evidence of prosecution witnesses as well as defence witness that relation between the appellant and the deceased was very cordial. Yet another important aspect of the case is that he was beaten by the villagers and had consumed liquor and the said well had no boundary, it was open and therefore, possibility of someone falling into the well during night also cannot be ruled out.

15) Considering the totality of the case, we are of the view that there is not enough evidence against the appellant on which basis he can be convicted, therefore, the benefit of doubt must be credited to the appellant and he deserves to be acquitted of the charge leveled against him.

16) In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellant is acquitted of the charge under Section 302 of IPC by extending him benefit of doubt. The appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.P. Sharma)
Judge