

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 739 of 2011

- Towaram Yadav, S/o Rama Yadav, 22 years, R/o Village Khampura, P.S. Boretalav, Distt. Rajnandgaon (CG)

---- Appellant

Versus

- State Of Chhattisgarh through District Magistrate, Rajnandgaon, Distt. Rajnandgaon (CG)

---- Respondent

For Appellant	:	Shri Keshav Dewangan, Advocate.
For Respondent/State	:	Shri Vivek Sharma, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board by Justice Pritinker Diwaker

25/09/2017:

This appeal arises out of the judgment of conviction and order of sentence dated 4.8.2011 passed by the Additional Sessions Judge, Rajnandgaon in ST No.07/2010 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.500/- with default stipulation.

02. As per prosecution case, on 22.5.2010 at about 11 pm the accused/appellant committed murder of one Rajeev Lilhare, who used to harass and tease the sister of the appellant, by strangulating him with a nylon rope. After committing murder, the appellant kept his dead body on his shoulder and threw the same outside his house, which was

seen by PW-7 Basant Lilhare. Before number of villagers including PW-2 Ramprasad, PW-3 Motiram, PW-5 Gautam & PW-6 Rampreet the appellant also made extrajudicial confession that it is he who killed the deceased. On 23.5.2010 at 7.40 am FIR (Ex.P/3) was registered under Section 302 of IPC against the appellant at the instance of PW-2 Ramprasad and immediately thereafter at 7.45 am mereg intimation Ex.P/2 was recorded at the instance of PW-2. Inquest over the dead body was conducted on 23.5.2010 vide Ex.P/6 and thereafter the body was sent for postmortem which was conducted on the same day by PW-11 Dr. S. Choudhary vide Ex.P/14 who noticed that there was bleeding from nose, ligature mark around the neck and rigor mortis was present all over the body. He also found fracture of trachea. In his opinion, the cause of death was asphyxia due to obstruction of air passage. As per query report (Ex.P/16) dated 15.6.2010 given by PW-11, the death was homicidal in nature. On 23.5.2010 memorandum of the appellant was recorded vide Ex.P/7 and pursuant to which one nylon rope was seized vide Ex.P/8. While framing charge, the trial Court framed charge under Section 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 12 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 defence, he examined one witness.

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 rests on circumstantial evidence but nature of the same is not as such which could be made basis for conviction.

(ii) that the main piece of evidence against the appellant relied upon by the trial Court is the evidence of extrajudicial confession allegedly made by the appellant before PW-2 Ramprasad, PW-3 Motiram, PW-5 Gautam & PW-6 Rampreet, however, the evidence of extrajudicial being weak in nature cannot be made basis of his conviction unless the same is corroborated by other cogent and reliable evidence.

(iii) as regards the other piece of evidence against the appellant i.e. the evidence of PW-7 Basant, who allegedly saw the appellant throwing dead body of the deceased, the same is also not reliable.

(iv) that even if the evidence of the extrajudicial confession is taken into consideration, present appears to be a case of private defence of person as the appellant killed the deceased because he was teasing his sister and subjected her to rape.

(v) that even if the entire prosecution case is taken as it is, the incident occurred all of sudden on account of provocation by the deceased and as such, the case of the appellant would not travel beyond Section 304 Part-II of IPC. Further, considering his detention period, which comes to more than seven years, after conversion of his conviction into one under Section 304 Part-II, he may be sentenced to the period already undergone by him.

06. On the other hand, State counsel supporting the impugned

judgment has submitted that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in it warranting interference by this Court. He submits that there is no evidence on record that sister of the appellant was being harassed or teased or was subjected to rape by the deceased which provoked the appellant to commit the offence and therefore, in absence of any such evidence or specific defence by the appellant, the argument advanced in this behalf by the appellant holds no water.

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

08. PW-1 Khemlal Chandel, Patwari, prepared the spot map Ex.P/1. PW-2 Ramprasad is the lodger of FIR (Ex.P/3) and merged intimation (Ex.P/2). He has stated that after coming to know about the incident when he went to the house of the deceased, he found dead body of the deceased lying on the floor. He was first informed by Ramhu about the incident and then the appellant also confessed before him and other villagers that it is he who killed the deceased. In lengthy cross-examination, this witness remained firm and nothing could be elicited by the defence to its advantage.

09. PW-3 Motiram Uike is the another witness before whom the appellant made extrajudicial confession. He is also a witness to inquest Ex.P/6, memorandum of the appellant Ex.P/7 and seizure Ex.P/8. He has stated that upon coming to know about the incident he along with others went to the house of the deceased, found him lying dead and on being asked father of the deceased informed them that the appellant had knocked the deceased down after lifting him on his shoulder near

the house of Banchhore. When they went to the house of the appellant and called him out, the appellant on being asked stated that as the deceased was molesting his sister, he killed him. This witness also remained intact in his lengthy cross-examination.

10. PW-4 Ganpat Lilhare, witness to memorandum of the appellant and seizure, has proved the same. PW-5 Goutam Singh is also a witness before whom extrajudicial confession was made by the appellant that it is he who killed the deceased as he was harassing his sister. PW-6 Rampreet, yet another witness of extrajudicial confession, has duly supported the prosecution case. PW-7 Basant Lilhare has stated that on 22.5.2010 at about 11 pm father of the appellant Rama Yadav came to his house and requested him to accompany him to his house. When he (this witness) was going to the house of the appellant, he saw the appellant throwing one person being carried by him on his shoulder near the house of one Banchhor and when he asked Rama Yadav he told that it is his (this witness's) son Ramu only. He has stated that thereafter the villagers went to the house of the appellant and called him out, on which the appellant came out and told that as the deceased was molesting his sister, he killed him. He also remained intact in his cross-examination. PW-8 Nand Kumar, Head Constable, assisted in the investigation. PW-9 Narsingh has turned hostile. PW-10 Alok Kumar Singh, JMFC, recorded statement under Section 164 of Cr.P.C. of PW-9 Narsingh. PW-11 Dr. S. Choudhary conducted postmortem on the dead body on 23.5.2010 vide Ex.P/14 and noticed that there was bleeding from nose, ligature mark around the neck and rigor mortis was present all over the body. He also found fracture of

trachea. In his opinion, the cause of death was asphyxia due to obstruction of air passage. As per query report (Ex.P/16) dated 15.6.2010 given by him, the death was homicidal in nature. PW-12 DP Singh, investigating officer, has duly supported the prosecution case.

11. DW-1 Dr. BP Ekka medically examined the appellant on 24.5.2010 vide Ex.D/5 and noticed some injuries on his body.

12. 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 before PWs-2, 3, 5 & 6 and also the evidence of PW-7 who saw the appellant carrying dead body of the deceased on his shoulder and then throwing the same.

13. 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.”

14. 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.'

15. 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.

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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."

16. 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.

17. In the present case, it has come in the evidence of the prosecution witnesses as also the defence of the appellant that the appellant used to remain annoyed with the deceased as he used to eve-tease/molest his sister. Upon coming to know about the incident when the villagers including PW-2 Ramprasad, PW-3 Motiram, PW-5 Gautam & PW-6 Rampreet went to the house of the appellant and called him out, the appellant came out of his house and confessed to have killed the deceased as he was molesting his sister. The aforesaid witnesses have consistently stated before the Court that the appellant made such confessional statement before them and the defence has failed to elicit anything from them to make their evidence untrustworthy or doubtful. There is no evidence by the defence that these witnesses stated so on the ground of any previous enmity, ill-will with the appellant or under the influence by the complainant party. In their lengthy cross-examination these witnesses remained firm.

18. 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.

19. The evidence of extrajudicial confession gets support from the evidence of memorandum and seizure. On the memorandum of the appellant Ex.P/7 wherein he has stated that he killed the deceased as he was molesting his sister by strangulation, a nylon rope was seized vide Ex.P/8. PW-3 Motiram Uike and PW-4 Ganpat Lilhare have duly supported the prosecution case on the point of memorandum and seizure. Further, the evidence of extrajudicial confession stands corroborated from the medical evidence, according to which the deceased was strangled to death, there was ligature mark around the neck, trachea was fractured, his cause of death was asphyxia due to obstruction of air passage and that the death was homicidal in nature.

20. Yet another important piece of evidence against the appellant is the statement of PW-7 Basant who on the fateful night saw the appellant throwing one person being carried by him on his shoulder, near the house of one Banchhor, who was later found to be his son/deceased. He has also stated that when 15-20 villagers went to the house of the appellant to enquire about the incident, the appellant confessed his guilt saying that it is he who killed the deceased as he was molesting his sister. Defence has failed to elicit anything from him

to cast doubt on the credibility of this witness.

21. The appellant in his defence has stated that he is innocent and has been falsely implicated and in fact, the deceased had committed rape with his sister, which was going to be reported to the police and therefore, for fear of being defamed the deceased committed suicide by hanging. This defence of the appellant stands falsified from the very fact, which has been duly proved by the prosecution, that the death of the deceased was not suicidal but was homicidal in nature. Even otherwise, there is no such evidence, either in the cross-examination or examination of any defence witness, that the deceased had ever raped the sister of the appellant for which report was going to be lodged by him. Furthermore, the argument of the counsel for the appellant that the appellant killed the deceased in exercise of right of private defence of person, in the given facts and circumstances of the case, the nature of evidence available on record as also in view of the defence taken by the appellant in his statement under Section 313 of Cr.P.C., appears to be out of place and therefore, is of no help to the appellant.

22. We also find no force in the argument of the appellant that in the facts and circumstances of the case, the appellant can at best be held guilty under Section 304 Part-II of IPC as he killed the deceased on being provoked by him. Though it has come in the evidence of the prosecution witnesses that the appellant used to remain annoyed with the deceased as he used to evetease/molest his sister but there is no evidence that on the date of incident the deceased was eve teasing or molesting the sister of the appellant which can be said to have provoked him to do away with the deceased. Rather it appears that on

account of there being enmity of the appellant with the deceased on this score, he was killed by the appellant. Thus, considering the manner in which the deceased was done to death by the appellant coupled with the strong motive attributed to him, it is writ large that while strangulating the deceased the appellant had not only intention to put an end to his life but also had the knowledge that such an act would result in his death. Being so, his conviction under Section 302 of IPC is strictly in accordance with law and needs no alteration.

23. 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 Section 302 of IPC. Resultantly, the appeal fails and is, accordingly, dismissed. As the appellant is reported to be in jail, no further order regarding his arrest/surrender etc. is required.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(R.P. Sharma)
Judge