

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 925 of 2015

- Madvi Joga S/o Madvi Bheema Aged About 31 Years R/o Village Molasnar, Markapara, Police Station Bhanshi, District South Bastar Dantewada, Chhattisgarh, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Bhansi, District Dantewada, Chhattisgarh, Chhattisgarh

---- Respondent

For Appellant	: Ms. Sofia Khan, Advocate
For Respondent/State	: Shri Ravindra Agrawal. G.A.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Sanjay Agrawal

Judgement on Board by Pritinker Diwaker J.

12/03/2018

This appeal arises out of judgment and order dated 20.04.2015 passed by the Sessions Judge, Dakshin Bastar, District Dantewada in S.T. No. 183/2008 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life.

2. In the present case, name of the deceased is Madvi Sukdi, mother of accused/appellant. It is alleged that on 14.07.2008, at about 7.00 p.m. when the appellant returned home, his mother was providing food to his son, he asked for food and in reply deceased requested the appellant to wait a while as she was giving food to his child. Accused/appellant out of anger at first slapped the deceased and then assaulted her with kitchen knife on her stomach resulting

instantaneous death. After killing the deceased appellant also made extra judicial confession before the panchayat which has been duly proved by Madhusudan Bhaskar (PW-1) , Lekami Chamru (PW-8) and Barsa Hunga (PW-9). FIR (Ex.P-13) was lodged against the appellant on 15.07.08 and soon thereafter mereg intimation Ex.P-12 was registered against him. Inquest Ex.P-1 was prepared and body was sent for postmortem examination which was conducted by Dr. Vijay Karma (PW-11) vide Ex.P-11 and according to him, cause of death was due to excessive internal and external bleeding followed by hemorrhage shock and death was homicidal in nature. On the basis of memorandum of accused/appellant Ex.P-8 seizure of kitchen knife Ex.P-2 was made however as per FSL report Ex.P-18, no blood was found on the seized weapon. After filing of charge sheet, the trial judge has framed charge against the appellant under Section 302 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 14 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is as under :

I) that the appellant has been convicted solely on the basis of the evidence of extra judicial confession before Madhusudan Bhaskar (PW-1) , Lekami Chamru (PW-8) and Barsa Hunga

(PW-9). It has been argued that the evidence of extra judicial confession is weak and therefore the appellant cannot be convicted.

ii) That even if the entire prosecution case is taken as it is, appellant is liable to be convicted for lesser offence as the case would fall under exception 4 of Section 300 IPC.

6. Opposing the argument it has been argued by the State counsel that the appellant was knowing well that the deceased was providing food to his children yet he was insisting for food and deceased asked him to wait for a while but he assaulted her in a brutal manner on her stomach, chest and abdomen resulting death of the deceased. He submits that considering the intensity of the injury on the vital parts of the body and the manner in which it has been caused, the conviction of the appellant under Section 302 IPC is in accordance with law. He further submits that the witnesses of extra judicial confession Lekami Chamru (PW-8) and Barsa Hunga (PW-9) PW-8 and 9 have duly supported the prosecution case.

7. Heard counsel for the parties and perused the material available on record.

8. Madhusudan Bhastkar (PW-1) is a witness to village panchayat where the appellant made extra judicial confession. He has categorically stated that in the village panchayat accused/appellant confessed that he killed his mother. Barsa Chhannu (PW-7) is also a witness to extra judicial confession however at one place he has stated that while cutting the vegetables deceased sustained injury

whereas in the next para he has stated that it is the accused/appellant who caused injuries to her and this is what has been confessed by the accused. Lekami Chamru (PW-8) and Barsa Hunga (PW-9) are the other two witnesses of extra judicial confession who have categorically supported the prosecution case and stated that the accused/appellant had made extra judicial confession before them. Dr. Vijay Verma (PW-11) is the doctor who conducted postmortem examination on the body of the deceased vide Ex.P-11 and according to him, cause of death was due to excessive internal and external bleeding followed by hemorrhage shock and death was homicidal in nature. Lakhan Singh Thakur (PW-12) is the Investigating Officer who has done the investigation.

9. Though some of the witnesses have not supported the prosecution case but considering the statement of Madhusudan Bhaskar (PW-1) , Lekami Chamru (PW-8) and Barsa Hunga (PW-9) it is apparent that the accused/appellant made extra judicial confession before the panchayat and these witnesses have duly proved the same. True it is that the witnesses of extra judicial confession is considered to be a weak type of evidence but it is also a settled proposition of law that despite the inherent weakness of an extra judicial confession as a piece of evidence, the same cannot be ignored if it is otherwise shown to be voluntary and truthful. Extra judicial confession cannot always be termed as tainted evidence and that corroboration of such evidence is required only as a measure of abundant caution. If the Court finds a witness to whom confession was made to be trustworthy and that the confession was true and voluntary, a conviction can be found on such evidence alone. More importantly, the Court cannot start with the

presumption that extra judicial confession is always suspicious or a weak type of evidence but it would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak about such a confession and whether the confession is voluntary and truthful.

10. 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. [AIR1952 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

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 extra judicial 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 extra judicial 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 extra judicial 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*, : 1954 CriLJ910 this Court again in *Maghar Singh v. State of Punjab*, : AIR 1975 SC 1320 held that the evidence in the form of extra judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the 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.*, : 1985 CriLJ 1862 this Court cautioned that it is not open to the court trying the criminal case to start with a presumption that extra judicial confession is always a weak type of evidence. 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 extra judicial

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.*, : 1990 CriLJ 2289 this Court held that an unambiguous extra judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion, and suggestion of any falsity. 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 scrutinized. 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 extra judicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration.'

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 extra judicial 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 extra judicial 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 extrajudicial 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.

11. The legal position is fairly well-settled that an extra judicial confession is capable of sustaining a conviction provided the same is not made under any inducement, is voluntary and truthful. Whether or not these attributes of an extra judicial confession are satisfied in a given case will, however, depend upon the facts and circumstances of each case. It is eventually the satisfaction of the Court as to the reliability of the confession, keeping in view the circumstances in which the same is made, the person to whom it is alleged to have been made and the corroboration, if any, available as to the truth of such a confession that will determine whether the extra judicial confession

ought to be made a basis for holding the accused guilty.

12. Present is a case where the incident occurred when the deceased had simply asked the appellant to wait a while for food as at that point of time she was providing food to his children but instead of waiting for sometime the appellant at first slapped the deceased and then caused two injuries on the chest and stomach resulting her death. The vital part where the injuries have been caused resulted instantaneous death of the deceased and the manner in which it has been caused, itself speaks the volume.

13. In view of the above factual matrix and upon appreciation of evidence, we find that the evidence has been appreciated by the learned trial court in consonance with the rules and procedure of law. The findings can neither be termed as perverse or improbable. The appellant has been convicted by a well reasoned judgment. The manner in which the injuries have been inflicted on the deceased clearly makes out a case under Section 302 IPC. We find no substance in the argument of the counsel for the accused/appellant that the appellant is liable to be convicted for lesser offence. The trial Court was justified in convicting the accused/appellant under Section 302 IPC. We find no merit in the present appeal and the same is dismissed accordingly. Being already in custody, no order in respect of his arrest etc. is necessary.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge

