

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1156 of 2012

(Arising out of judgment/order dated 14.12.2012 in Case No. 29/2012 of the learned Sessions Judge, Raipur)

- Ramesh Sahu S/o Mohanlal Sahu, aged about 40 years, R/o Village Sankari, PS Abhanpur, Distt. Raipur (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh Through : The Police Station Abhanpur, Distt. Raipur C.G.

---- Respondent

For Appellant	:	Shri Arvind Shrivastava, Advocate
For Respondent	:	Shri R. Agrawal, Government Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgement

P. Diwaker, J

04/01/2018

1. The appellant has preferred this criminal appeal being aggrieved with the judgment dated 14.12.2012 passed by the learned Sessions Judge, Raipur in S.T. No.29/2012 whereby he has been convicted for the offence punishable under Sections 302 & 201 of the Indian Penal Code (for short 'the IPC') and sentenced to life imprisonment and fine of Rs.5,000/- & RI for 3 years with fine of Rs.500/-, with usual default clauses, respectively.
2. In the present case name of deceased is Shishupal, elder brother of accused/appellant.
3. The prosecution case, in short, is that the accused/appellant, on account of land dispute between him and the deceased, was suspecting that the deceased was practising witchcraft and therefore on 30.10.2011 at about

9 p.m. he along with his son committed murder of deceased by causing several injuries to him by club and thereafter took his body to a thrashing field and burnt it. It is further case of the prosecution that after killing the deceased, the accused/appellant had gone to the village Kotwar Bhikharam (PW-1) and made a confession before him that he had killed the deceased. On coming to know about the incident, Bhikharam (PW-1) had gone to Maan Singh (PW-4), Ghanshyam (PW-5), Jaideep & Omprakash and informed them about the murder of deceased and confession made by the accused/appellant. Thereafter, the aforesaid persons came to the house of PW-1 where they found the accused/appellant sitting. Merg Intimation (Ex.P-1) was recorded on 31.10.2011 at 00.50 hrs at the instance of PW-1. Immediately thereafter at 1 in the midnight FIR (Ex.P-2) was registered against the accused/appellant under Sections 302 & 201 of IPC. Inquest on the body of deceased was prepared vide Ex.P-8. Body was sent for post-mortem examination which was conducted by Dr. S.K. Bagh (PW-9) vide Ex.P-9 and he noticed following injuries;-

- Ecchymosis present on right and left upper one-third part of leg just below right knee of 12x5cm in size.
- Ecchymosis present on right & left buttock of 5x3cm in size.
- Reddishness at right foot dorsal aspect of 5x3cm in size.
- Red ecchymosis at right temporal region of 6x3cm obliquely placed.
- 7 cm long fracture in right temporal region

As per opinion of the doctor, the cause of death of the deceased was due to asphyxia as a result of ante mortem burn injuries caused by hard & blunt object and the death was homicidal in nature.

4. After completion of investigation, charge sheet was filed against the accused/appellant under Sections 302 & 201 IPC and accordingly the

charges were framed against him. The prosecution in order to substantiate its stand, examined 12 witnesses and exhibited a number of documents. Statement of accused/appellant was 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 the crime in question.

5. After hearing counsel for the parties, the trial Court by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.

6. Learned counsel for the appellant submits that;

- there is no eye-witness of the crime and in order to bring home the charge the prosecution has relied on the extra-judicial confession said to have been made by appellant before the Kotwar (PW-1), which is very weak in nature. Merely on the basis of alleged extra judicial confession the appellant cannot be convicted unless there is some other corroborative piece of evidence against him.
- Had the appellant made any such confession before PW-2, he would have confessed the same before PW-4 & PW-5 also, but these witnesses have not deposed about any such admission of guilt by the appellant before them.
- there is discrepancy in the evidence as to whether it is the police who reached the house of PW-1 or PW-1 had gone to the police station for lodging Merg and FIR.

7. On the other hand, State Counsel supporting the impugned judgment submits that :-

- present is a case where extra-judicial confession has been made by the appellant before PW-1 and he has duly supported the prosecution case.
- there is no evidence that the witness to extra-judicial confession had inimical relation with the appellant and that is why he had falsely implicated him. Thus there is no reason before this Court to disbelieve the testimony of PW-1 which is not only reliable but also inspires confidence.
- it is not the prosecution's case that the accused/appellant also made extra-judicial confession before PW-4 & PW-5. However, these witnesses have confirmed presence of accused/appellant at the residence of PW-1 and thereby duly corroborated the prosecution case along with statement of PW-1 regarding making of confessional statement by the accused/appellant.
- the accused/appellant pointed out the place where the body of the deceased was burnt by him.
- minor discrepancies regarding registration the place where merg & FIR was registered have no bearing on the case.

8. Heard counsel for the respective parties and perused the materil on record.

9. Bhikharam Sahu (PW-1) is the witness before whom the appellant had admitted to have killed the deceased. He has stated that he knew the appellant and the deceased. On the date of incident at about 10 in the night, the accused/appellant came to his house and told that he had burnt the deceased after committing his murder. Hearing this, he went to Ghanshyam Prasad Sahu, Sandeep Dhar Diwan, Maan Singh Sahu and

Omprakash Sahu and informed them about the incident. At the instance of villagers, he gave intimation on telephone to the police. After arrival of the police, the accused/appellant took them to the place where the body of deceased was lying in burnt condition.

10. Kenwara Bai (PW-2), wife of deceased, has stated that on the date of incident the deceased had left the house by saying that he is going to attend the call of nature and thereafter he did not return. At about 12-1 in the midnight the police along with villagers came to her house and made certain enquiry from her. At about 2-2.30 in the night the police again came to her house. Next morning she was informed that her husband had been killed by the accused/appellant and his son.

11. Dameshwar Sahu (PW-3) is a witness of memorandum (Ex.P-5) and seizure memo Ex.P-6.

12. Maan Singh (PW-4) has stated that in the fateful at about 10 pm Kotwar Bhikha (PW-2) came to him and asked him to accompany his house by saying that accused/appellant is saying that he had killed his brother Shishupal. When he reached the house of PW-1, accused/appellant & others were already present there. However, the accused/appellant did not disclose anything to him. According to this witness, the accused/appellant pointed out the place where the body of deceased was lying.

13. Ghanshyam Sahu (PW-5) has also made a similar statement to that of PW-4.

14. Manish (PW-6) & Chamru Sahu (PW-7) are the witnesses of inquest (Ex.P-8). Dipak Tiwari (PW-8) is the Patwari who had prepared the map (Ex.P-4). Dr. S.K. Bagh (PW-9) is the doctor who conducted post-

examination examination over the body of deceased and noticed the injuries as described above. Jhaduram (PW-10) did not support the prosecution and turned hostile. Anup Nag (PW-11) is the investigating officer who has duly supported the prosecution case. Kunwarlal (PW-12) has stated that on the fateful night when he was sitting in the house of deceased, the deceased left the house to answering the nature's call and thereafter he did not return in the night. He has further stated that the police took him along with others to the place of occurrence wherefrom one dead body lying in burnt condition was recovered.

15. Admittedly, there is no eye-witness to the incident and the case of the prosecution rests on circumstantial evidence i.e. extra-judicial confession made by accused/appellant before village Kotwar Bhikharam (PW-1). In case of circumstantial evidence where the prosecution relies upon an extra judicial confession the Court has to examine the same with great deal of care and caution. It is settled principle of criminal jurisprudence that the Extra Judicial Confession is a weak piece of evidence. Where the Court upon deep appreciation of the entire prosecution evidence needs to base a conviction on extra judicial confession it must ensure that the same inspire confidence and is corroborated by the other prosecution evidence but if the extra judicial confession suffers from material discrepancies or inherent probabilities and does not appear to be cogent as per the prosecution version it will be difficult for the court to base a conviction on such confession.

16. In the matter of State of UP v. M.K. Anthony reported in (1985) 1 SCC 505 the Supreme Court observed thus;-

“15. There is neither any rule of law nor of prudence that evidence furnished by extra-judicial confession cannot be

relied upon unless corroborated by some other credible evidence. The courts have considered the evidence of extra-judicial confession a weak piece of evidence. [See Jagta v. State of Haryana](#) and [State of Punjab v. Bhajan Singh and Ors. In Sahoo v. State of U.P.](#) , it was held that 'an extra-judicial confession may be an expression of conflict of emotion, a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime.' Before evidence in this behalf is accepted, it must be established by cogent evidence what were the exact words used by the accused. The Court proceeded to state that even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence. In that case, the evidence was that after the commission of murder the accused was heard muttering to himself that he has finished the deceased. The High Court did not interfere with the conviction observing that the evidence of extra-judicial confession is corroborated by circumstantial evidence. However, in [Pyara Singh v. State of Punjab](#) (1978) 1 SCR 661, this Court observed that the law does not require that evidence of an extra-judicial confession should in all cases be corroborated. It thus appears that extra-judicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extra-judicial confession comes from

the mouth of witness/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 for attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trust-worthy and beyond reproach the same can be relied upon and a conviction can be founded thereon.”

17. In *Gura Singh vs. State of Rajasthan* reported in (2001) 2 SCC 205 the Supreme Court observed as under:-

6. 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 SCR 1098), 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 MP [AIR 1985 SC 1678] this Court cautioned that it is not open to the court trying the criminal case to start with 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 by itself not weaken the case of the prosecution based upon such a confession. In Kishore Chand v. State of HP [AIR 1990 SC 2140] 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 required 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 [AIR 1991 SC 37]. After referring to the judgment in Piara Singh v. State of Punjab [AIR 1977 SC 2274] this Court in Madan Gopal Kakkad v. Naval Dubey & anr [JT 1992 (3) SC 270] 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.”

18. In State of Rajasthan v. Raja Ram reported in (2003) 8 SCC 180, the Hon'ble Supreme Court stated the principle that 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 such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witness 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.

19. Again in Baskaran & another v. State of Tamil Nadu reported in (2014) 5

SCC 765 the Supreme Court observed thus;-

“17.It is no doubt true that this Court time and again has held that an extra-judicial confession can be relied upon only if the same is voluntary and true and made in a fit state of mind. The value of the evidence as to the confession like any other evidence depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. But it is not open to any court to start with the presumption that extra-judicial confession is insufficient to convict the accused even though it is supported by the other circumstantial evidence and corroborated by independent witness which is the position in the instant case. The Courts cannot be unmindful of the legal position that even if the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction.”

20. Thus, the aforesaid judgements of the Hon'ble Supreme Court lays down the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. The principles laid down are :

- (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 grater 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.

21. Thus, keeping in mind the above legal principles, we proceed further. In the present case, the prosecution in order to prove the extra-judicial confession relied upon the evidence of PW-1 Bhikaram, who is Kotwar of the village. This witness has deposed that on the date of incident he was sleeping in his house. At about 10 in the night accused/appellant came to his house, woke him up and informed that he has burnt his brother Shishupal after killing him. After hearing the extra judicial confession, this witness immediately went to Maan Singh (PW-4) & Ghanshyam Prasad Sahu (PW-5) and narrated the incident, as disclosed to him by accused/appellant, to them and thereafter on the advise of the villagers, he gave information on telephone to the police. According to this witness, after arrival of the police the accused took them near the stone crusher where the body of deceased was lying in burnt condition. This extra-judicial confession is corroborated by the evidence of Maan Singh (PW-4) & Ghanshyam Prasad Sahu (PW-5) who have though not stated that the accused had confessed his guilt before them, but admitted that after coming to know about the incident, when they reached the house of PW-1 they found the accused/appellant sitting there and that the appellant accompanied by the police and Kotwar (PW-1) went to stone crusher and showed the burnt body of deceased. In the cross-examination of this witness, neither there is any suggestion that confession was involuntarily

or was given under threat or coercion. Further, there is absolutely no evidence on record to suggest that the appellant was having inimical relation with the aforesaid witness to extra-judicial confession. Thus, upon due consideration of the witness to extra-judicial confession, we are of the opinion that the accused/appellant made voluntary confession in which not only he admitted his guilt but also disclosed the place where he burnt the body of deceased after killing him. In other words, we are of the opinion that the evidence produced by the prosecution regarding extra judicial confession is clear and convincing, evidence of PW-1 is reliable and inspires confidence, the extra-judicial confession made by the accused/appellant before PW-1 is voluntary & true and on the basis of that, the accused/appellant can be convicted.

22. Counsel for the appellant pointed out some discrepancies in relation to lodging of FIR (Ex.P-2). However, we find that the same are absolutely in the realm of minor discrepancies, which do not go to the root of the matter. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The omission or discrepancy should create a serious doubt about the truthfulness or creditworthiness of a witness. In the instant case, we have carefully analysed the evidence of PW-1 before whom extra-judicial confession has been made by the accused, and found his testimony to be consistent, cogent and worth reliance. Therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and cannot be taken to be a ground to reject the prosecution evidence.

23. It is apparent from the record that burnt body of the deceased came to be discovered at the instance of accused/appellant, which has been established by the prosecution by examining PW-1, PW-4 & PW-5. Thus

it is clear that the accused/appellant after committing murder of deceased caused disappearance of evidence by burning the dead body of the deceased with an intention to screen himself from legal punishment and, therefore, guilty of having committed the offence punishable under Section 201 of IPC.

24. For the reasons stated above, we are of the considered view that the trial Court has not committed any illegality or infirmity while passing the impugned judgment convicting & sentencing the accused/appellant under Sections 302 & 201 of IPC. Accordingly, the appeal filed by the accused/appellant being without any substance is liable to be and hereby dismissed.

Sd/-
(P. Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge

roshan/-