

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 536 of 2013**

Shauklal S/o Gurde Patel Aged About 40 Years R/o Chhandanpur PS Basna, Distt. Mahasamund Chhattisgarh
----Appellant

Versus

State Of Chhattisgarh Through Station House Officer, PS Basna, Distt. Mahasamund Chhattisgarh
....Respondent

For Appellant : Mr. K.K. Singh, Advocate
 For State : Ms. M. Asha, Panel Lawyer

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board by Manindra Mohan Shrivastava, J.

15.09.2018

Heard.

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 22.3.2013 passed by the First Additional Sessions Judge, Mahasamund, in Sessions Trial No.93/2012, whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below :

Conviction	Sentence
Under Section 302 of IPC	Life Imprisonment and fine of Rs.1000/-, in default of payment of fine amount 2 months additional R.I.

2. The case of the prosecution, as unfolded from the impugned judgment and the records of the case, is that an FIR in Ex.P/8 was lodged in Police Station Basna by Ansaar Khan (PW1) at about 9:10 a.m. in the morning, wherein, it was stated that the informant was informed that the dead body of his brother Zahur Khan is lying on the road, in front of the shop of Siddiqui Tailor. He went to the spot and found dead body of his brother lying there. Upon the information so received, the police arrived at the place of occurrence,

prepared inquest over dead body (Ex.P/2) in presence of witnesses and the dead body was sent for postmortem. Dr. B.B. Koshariya (PW4) conducted the postmortem and prepared a report in Ex.P/10. In the opinion of the Doctor, cause of death was hemorrhage, shock due to multiple injuries. Nature of death was stated to be homicidal and time of death was stated to be within 24 hours of postmortem examination. During the course of investigation, the police recorded memorandum of the appellant and it is said that on the basis of the memorandum statement, an iron pipe, nine inches long and a stone was recovered and seized from the shop of Mohd. Siddiqui on the memorandum statement. Later on, the police while recording 161 Cr.P.C. statement of the persons appearing to be having knowledge of the incident, recorded statement of Mohd. Siddiqui (PW3), who stated that the appellant made an extra-judicial confession before him that he murdered Zahur Khan. Upon completion of usual investigation, charge-sheet was filed before the Magistrate who, in turn, committed the case for trial. On the basis of the material contained in the charge-sheet, learned trial Court framed charge against the appellant for alleged commission of offence under Section 302 of IPC. The appellant having abjured guilt was put to trial.

3. In order to prove its case, the prosecution examined as many as 18 witnesses. The appellant was examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against him in the evidence led by the prosecution. The appellant in his examination denied all the incriminating circumstances and stated that he has been falsely implicated. Learned Trial Court, however, relying upon the evidence led by the prosecution, particularly the recovery of iron pipe and stone on the memorandum statement of the appellant and the evidence of extra-judicial confession, held the appellant guilty of commission of offence, under section 302 of IPC and sentenced as described above.

4. Assailing correctness and validity of impugned judgment of conviction and order of sentence, learned counsel appearing for the appellant argued that the appellant has been convicted on a weak and unreliable evidence of extra-judicial confession which does not inspire confidence. He contended that the prosecution story is that Zahur Khan was murdered inside the shop of Mohd. Siddiqui (PW3). The conduct of Mohd. Siddiqui (PW3), itself, is doubtful because he admits, in his cross-examination, that upon so called confession made by the appellant before him, he neither reported the matter to the police nor any other inhabitant of the locality. According to him, this conduct renders the evidence of extra-judicial confession highly doubtful. Next submission is that as far as recovery of nine inches hollow pipe and stone on the memorandum of the appellant is concerned, even according to prosecution, at the time of inquest over dead body, the panch witnesses had apprehended that Zahur Khan was murdered in the shop and it has come that the weapon

used for commission of offence was also found in the shop. The memorandum has been prepared after inquest over the body when the probable place of incident and the placement of the weapon alleged to be used was already known. Moreover, according to Mohd. Siddiqui (PW3), the appellant used to sleep in the night in front of the shop as a watchman. In these circumstances, the recovery of pipe and stone, by itself, are not incriminating evidence to involve the appellant more so when the stone and the pipe are not found to be stained with the blood group and origin of the deceased, much less, any human blood in any FSL report.

5. Relying upon the decision in the cases of **Churaman Singh Vs. State of MP (Now C.G.), 2013 (1) C.G.L.J. 208** and **Sunder Lal Vs. State of Chhattisgarh, 2012 (5) M.P.H.T. 30**, it is alleged that in the circumstances of the case when there is no eyewitness and the extra-judicial confession itself being a weak evidence and otherwise doubtful, the prosecution has failed to prove appellant's involvement in the alleged commission of offence, beyond reasonable doubt and the appellant is, therefore, entitled to be acquitted by giving him benefit of doubt.

6. On the other hand, learned counsel for the State supported the judgment of conviction and order of sentence by submitting that even though, extra-judicial confession may be a weak evidence, in the present case, the same is fully reliable and credible as there is nothing to show that Mohd. Siddiqui (PW3) had any intention or motive to falsely implicate the appellant. He has remained firm in his statement and merely because immediately after confession made, he did not rush to the police station or any other nearby resident to disclose such confession made before him by the appellant, without anything more, does not impeach the credibility of the witness of extra-judicial confession. Further submission is that in addition, memorandum and recovery of incriminating articles namely the weapon alleged to be used have been made at the instance of the appellant and the witnesses of memorandum and seizure have supported the same. Therefore, there is corroboration to the evidence of extra-judicial confession. Lastly, it is submitted that the extra-judicial confession is also corroborated from the medical evidence with regard to the manner, in which, the incident happened, therefore, the conviction does not warrant any interference.

7. We have heard learned counsel for the parties and perused the record.

8. Present is a case where the conviction is based on extra-judicial confession and recovery of weapon alleged to be used in commission of offence. The FIR (Ex.P/8) proved

by Ansaar Khan (PW1) records that at about 9:10 a.m. in the morning, a report was lodged in the police station that the dead body of Zahur Khan was found lying on the road in front of the shop of Mohd. Siddiqui (PW3). In the FIR, it has been stated that Zahur Khan appears to have been murdered by some unknown person.

9. The evidence of Investigating Officer (PW6) is that after receipt of information, he arrived at the spot and prepared inquest over dead body in Ex.P/2 after giving notices to the panch witnesses. The inquest report contains the information of panchs that Zahur Khan has been murdered by an unknown person inside the shop of Mohd. Siddiqui by inflicting injury on the head and other part of the body and his dead body has been thrown in an open gali in front of the shop. It further records that the place of incident appears to be the tailoring shop of Mohd. Siddiqui because inside the shop also, some blood stains were found which appears to have been washed with water. According to the Investigating Officer, after arriving at the spot, he prepared panchnama. It would thus be seen that during preparation of panchnama, itself, it was stated before the police that Zahur Khan was murdered inside the shop of Mohd. Siddiqui (PW3) and in that place of incident i.e. inside the shop, blood stains were found. Further, Rohit Pradhan (PW5) deposes in his evidence that after recording panchnama as above, the dead body was sent for postmortem and spot map in Ex.P/3 was prepared as stated by Ansaar Khan (PW1). He further submits that thereafter from the place of incident i.e. from inside the tailoring shop of Mohd. Siddiqui and also from a place in front of the shop, blood stained soil was collected and it was found that inside the shop, blood stains were washed with water and dried with the help of cotton which was also seized vide Ex.P/4. Thus, according to the prosecution evidence, at the initial stage of investigation itself, though the dead body was recovered from the road, place of incident was identified as the shop of Mohd. Siddiqui. It was only after this part of the investigation that at about 1:20 p.m., the memorandum statement of the appellant is said to be recorded and the weapon i.e. an iron pipe and stone is recovered from that very place i.e. the place identified as the place of incident.

10. The prosecution case rests on the extra-judicial confession of the appellant said to be given before Mohd. Siddiqui (PW3). It is relevant to note here that the place of incident by that time was already identified as the shop of Mohd. Siddiqui (PW3). Mohd. Siddiqui (PW3) in his evidence, deposes that on the date of incident, the appellant came to his house in the morning and confessed that he killed the Zahur Khan and the time of incident was about 2 to 3 a.m. in the night, thereafter, the police from Police Station Basna arrived in his house and appellant was taken to police station. He further states that after about 1½ hours of the confession made by the appellant before him, the police arrived in his house. In

cross-examination, he admits that when the appellant confessed before him, he did not lodge any report in the police station nor informed anybody in the vicinity.

11. The Investigating Officer (PW6) has stated in his evidence that the appellant was taken into custody after the report and then his memorandum was recorded in Ex.P/5. He further states that this was followed by recovery of weapon from the spot of incident. Curiously enough, all through this proceeding after arrival of the police at the scene of occurrence, till the proceeding of memorandum of seizure were drawn, by taking the appellant into custody, Mohd. Siddiqui remains conspicuously absent though the place of incident is said to be his shop only. The witness of extra-judicial confession Mohd. Siddiqui (PW3) claims that in the morning the appellant had come to his house and confessed before him having committed murder of Zahur Khan. If that was so, why this witness kept silent surreptitiously and did not disclose it to anybody ? The memorandum of appellant is said to have been taken at about 1:20 p.m. in the afternoon. The Investigating Officer does not say in the evidence that by that time, it was disclosed during investigation to him that Mohd. Siddiqui (PW3) informed regarding extra-judicial confession. According to Mohd. Siddiqui (PW3), the police had come to his house 1 ½ hours after the confession was made by the appellant before him in the morning. He, however, does not state the time at and around which such confession was made. However, as the report was lodged in the police station at 9:10 a.m. in the morning and Investigating Officer states that he proceeded to the scene of occurrence, it can be presumed that after the police reached at the spot and having found that the place of incident appears to be the shop of Mohd. Siddiqui (PW3) around that time, the police must have inquired from Mohd. Siddiqui (PW3) as stated by him in his evidence. But then, at this stage, Mohd. Siddiqui (PW3) does not disclose the fact of extra-judicial confession having been made by the appellant before him.

12. We cannot remain oblivious of the facts which are floating on the surface of the entire case that right from the beginning, when the police reached at the spot of occurrence, the panch witnesses had been stating that the place of incident was the shop of Mohd. Siddiqui (PW3) and the blood stains were found inside the shop and that in the panchnama, it is recorded and observed that blood stains found inside the shop were washed with the water.

13. In the aforesaid background and the circumstances of the case, borne out from the evidence of the prosecution, non disclosure of extra-judicial confession by Mohd. Siddiqui (PW3) to the police who had already arrived at the spot early in the morning, preparing panchnama, enquiring from Mohd. Siddiqui (PW3), making seizure on the memorandum, renders the extra-judicial confession evidence doubtful and it is difficult in the circumstances

to rely upon the same.

14. A Division Bench of this Court in the case of **Churaman Singh (supra)**, relying upon the judgment of the Hon'ble Supreme Court in the case of Sk. Yusuf Vs. State of West Bengal, AIR 2011 SC 2283 and other decisions held that the extra-judicial confession is a weak type of evidence and it must be established to be true. The extra-judicial confession can be accepted and can be made a basis for conviction only if it satisfies the test of credibility.

15. The circumstances and the evidence, as have come on record, which we have examined as above, we find in ourselves unable to rely upon the so called extra-judicial confession to convict the appellant for commission of offence of murder of Zahur Khan.

16. In our considered opinion, the appellant is entitled to be given benefit of doubt.

17. In the result, the appeal is allowed. Impugned judgment of conviction and order of sentence is set aside. The appellant is acquitted. The appellant be set free forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajendra Chandra Singh Samant)
Judge