

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 856 of 2012

- Kuldeepak @ Balu S/o Shri Loknath Miri Aged About 20 Years R/o Village - Bhandarpuri, Chowki - Gidhpuri, Ps - Palari, Distt. - Raipur Now Baloda Bazar C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through District Magistrate, Baloda - Bazar, Distt. Baloda - Bazar C.G.

---- Respondent

For Appellant	: Shri Yogesh Pandey, 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.

05/01/2018

This appeal arises out of judgment and order dated 27.08.2012 passed by the First Additional Sessions Judge, Baloda Bazar in S.T. No. 187/2011 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 500/- plus default stipulation.

2. In the present case name of the deceased is Govinda @ Gopi, elder brother of the accused/appellant. It is alleged that deceased Govinda used to quarrel with his parents and grandfather on account of property dispute. He also used to abuse and beat them. The family members were finding it difficult to tolerate the activities of the deceased. It is said that since prior to the incident deceased had beaten his grand father which resulted annoyance of the appellant and on

09.07.11, when the deceased was sleeping, accused/appellant caused axe injury to him resulting his death. Unnumbered FIR Ex. P-12 was lodged on 10.07.11 by Loknath (PW-12), father of the appellant and deceased, against unknown person under Section 302 IPC. Soon thereafter numbered FIR Ex.P-2 was registered on the basis of the unnumbered FIR. Inquest on the dead body was prepared on 10.07.2011 vide Ex.P-9 and the body was sent for postmortem examination which was conducted by Dr.B.S.Dhruv (PW-15) vide Ex. P-14 and according to him cause of death was by complication of haemorrhagic shock due to incised injury of neck and death was homicidal in nature and the mode of death was asphyxia. On 11.7.11 memorandum of the accused/appellant Ex.P-1 was recorded on which seizure of axe (Ex.P-2), Full pant (Ex.P-3) and vest (Ex.P-4) was given effect to. In the FSL report Ex.C-1 blood has been found in the seized articles but there is no serological report confirming the blood group or the origin of the blood. While framing the charge, trial judge has framed charge against the appellant under Section 302 IPC.

3. The prosecution has examined 18 witnesses to prove its case. Statement of the accused/appellant was also 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 conclusion of the trial, the trial Court vide its judgment impugned, found the accused/appellant guilty of the offence as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Counsel for the appellant submits as under :

i) that there is no eyewitness to the occurrence and the conviction of the appellant is based on circumstantial evidence but none of the

circumstances from which the inference of guilt of the appellant can be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellant who committed murder of the deceased.

ii) that deceased Govinda was a vagabond and quite often he used to beat his parents, grand father and other family members and therefore possibility of some other family member committing murder of the deceased can not be ruled out.

iii) that the appellant has been convicted solely on the basis of evidence of his extra judicial confession made by the appellant allegedly before Pawan Kumar (PW-4) and Pritam Das (PW-14). It has been argued that PW-14 has turned hostile whereas statement of Pawan Kumar (PW-4) is not reliable as there was no occasion for the appellant to make extra judicial confession before the said witnesses.

iv) He further argued that the evidence of extra judicial confession is always being treated as a weak piece of evidence and unless the same inspire confidence of this court, the appellant cannot be convicted.

v) Though certain articles have been seized on the memorandum of the accused/appellant, FSL is positive in respect of those articles but in absence of serological report where the prosecution has utterly failed to prove the origin of blood, FSL report loses its significance.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

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

8. Lakshman (PW-1) is the grand father of the deceased who was beaten by the deceased prior to the incident has not supported the prosecution case and has turned hostile. Kajol (PW-2) is the sister of the appellant and the deceased has turned hostile. Dwarika Das (PW-3) is a witness to extra judicial confession made by the appellant and memorandum Ex.P-1, seizure Ex. P-2, P-3 and P-4, has turned hostile. Pawan Kumar (PW-4) witness to extra judicial confession made by the appellant, has stated that he knew the accused/appellant and the deceased and on the date of incident he was not in his village. On the next day when he returned he came to know about the murder of the deceased. He has stated that when he was going to village kharora along with Kotwar and Pritam, accused/appellant came to them and confessed that he had killed his brother. Thereafter they handed over the appellant to police station Palari. He has further stated that deceased after consuming liquor used to abuse, quarrel and beat his parents and grandfather which he could not tolerate and therefore he killed him. He has stated that even on the date of incident deceased had beat his grand father. He is also a witness to memorandum Ex.P-1 and seizure Ex.P-2,3 and 4. In cross-examination he admits that a phone call came to Pritam and he is not aware as to whom Pritam was talking with. He has stated that while they were on the way to village Kharora they did not receive any phone call. He has denied the suggestion that any case was registered against the deceased as he used to tease one Bhagwati, daughter of Pawan Manhare. He has denied the fact that there was any quarrel between the deceased and brothers of Bhagwati. It is relevant to note here that some other witness has admitted the fact that there was a report against the deceased for harassing and teasing Bhagwati. From the evidence it also appears that

he has denied the fact that he is falsely implicating the appellant. Bholaram (PW-5) is the driver in whose tractor the accused absconded after the incident, has turned hostile. Ram Kumar (PW-6) and Vyasnarayan (PW-7) have not stated anything against the appellant and have turned hostile. Badri Prasad Tandon (PW-8) is the patwari who prepared spot map Ex.P-11. Govind Banjare (PW-9) , Sangeet Mahilange (PW-10) and Satyanarayan Puranbe (PW-11) have not stated anything against the appellant and have turned hostile. Loknath Miri (PW-12) is father of the appellant and the deceased who had lodged the FIR, has not stated anything against the appellant and has turned hostile. Pritam Das Miri (PW-14) is a witness before whom the appellant has made extra judicial confession, has turned hostile. He however admits that once the deceased was beaten by brothers of Bhagwati for teasing her and the case is pending before the court. Dr. B.S. Dhruv (PW-15) conducted postmortem examination on the body of deceased and has opined that the cause of death was by complication of haemorrhagic shock due to incised injury of neck and death was homicidal in nature. The mode of death was asphyxia. Anup Nag (PW-16) is the constable who has done part of the investigation. H.C. Jadhav (PW-17) is the Investigating Officer who has duly supported the prosecution case. Kunwar Singh (PW-18) has not stated anything against the appellant and has been declared hostile.

9. As per FSL report, Ex.C-1 blood has been found on the seized articles axe, vest and full pant of the appellant however there is no serological report and origin of the blood has not been proved. Even there is no evidence that the blood found on the seized articles contained human blood.

10. Close scrutiny of the evidence makes it clear that but for the evidence of extra judicial confession made by the appellant before PW-4 there is no legally admissible evidence against him. The other witnesses before whom the extra judicial confession was made by the appellant have not supported the prosecution case. 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. However, if 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. While dealing with the matter in relation to extra-judicial confession, it has been held by the Apex Court in the matter of **Sahadevan and Another Vs. State of Tamil Nadu** reported in (2012) 6 SCC 403 which reads as under :

15.1 In Balwinder Singh Vs. State of Punjab, 1995 Supp (4) SCC 259: 1996 SCC (Cri.) 59 the Court stated the principle that : (SCC p.265, para 10)

“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. When an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.”

15.2 In Pakkirisamy Vs. State of T.N. (1997)8SCC 158: 1997 SCC (Cri) 1249 the Court held that (SCC p. 162, para 8)

“ 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 Vs. State of T.N. (1998) 6 SCC 108: 1998 SCC (Cri) 1421 the Court stated the dictum that : (SCC p. 109, para 4)

“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 the 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 State of Rajasthan Vs. Raja Ram stated the principle that : (SCC p.192 para 19)

“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 the 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 : (SCC p. 192, para 19)

“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 Alope Nath Dutta Vs. State of West Bengal (2007) 12 SCC 230: (2008) 2 SCC (Cri) 264, while holding the placing of reliance on extra-judicial confession by the lower courts in absence of other corroborating material as unjustified, observed:

(SCC pp.265-66, paras 87 & 89)

“87. Confession ordinarily is admissible in evidence. It is 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; and (iii) corroboration.

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 *Sansar Chand Vs. State of Rajasthan* (2010) 10 SCC 604 : (2011) 1 SCC (Cri) 79 held that : (SCC p.611, paras 29-30)

“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 Vs. State of Mysore* (1970) 2 SCC 105: 1970 SCC (Cri) 320, *Mulkraj Vs. State of U.P.* AIR 1959 SC 902: 1959 Cri LJ 1219, *Sivakumar Vs. State* (2006) 1 SCC 714: (2006)1 SCC (Cri) 470 (SCC paras 40 & 41: AIR paras 41 & 42) , *Shiva Karam Payaswami Tewari Vs. State of Maharastra* (2009) 11 SCC 262: (2009) 3 SCC (Cri)1320 and *Mohd. Azad Vs. State of West Bengal* (2008)15 SCC 449: (2009) 3 SCC (Cri) 1082]

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 *Rameshbhai Chandubhai Rathod Vs. State of Gujarat* (2009)5 SCC 740:(2009) 2 SCC (Cri) 881, held as under : (SCC pp.772-73, para 53)

“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 of 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 Vs. State of West Bengal* (2011) 11 SCC 754: (2011)3 SCC (Cri) 620

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 the with the veracity of cases whether 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 probabilities.

vi) Such statement essentially has to be proved like any other fact and in accordance with law.

11. Considering the above proposition of law, if the facts of the present case is considered, what emerges is that after the incident, accused/appellant left the village and had gone to village Kharora and from there he called upon Pritam (PW-14) showing his desire to surrender. Evidence further reveals that (PW-3), (PW-4) and (PW-14) had gone to village Kharora and on the way they met the appellant who allegedly made extra-judicial confession before them. Two witnesses namely (PW-4) and (PW-14) have not supported the prosecution case and have turned hostile. The only witness Pawan (PW-4) who though has stated that the accused/appellant had made extra-judicial confession before him about the commission of the offence but he is not clear as to whom the appellant had first made a call and how all of a sudden they had gone to village Kharora and met the appellant on the way. Further there is evidence on record that daughter of cousin brother of this witness was teased and harassed by the deceased and he was also beaten by the brothers of the said Bhagwati. Considering this aspect, possibility of false implication of the accused/appellant cannot be ruled out. If the entire statement of PW-4 is looked into, the same does not inspire confidence of this court and we find it difficult to uphold the conviction of the appellant solely on the basis of this evidence when there is no other legally admissible evidence showing the complicity of

the accused/appellant in the commission of the offence.

12. The other piece of evidence against the appellant is seizure of certain articles of which FSL report Ex.C-1 has been found positive but in absence of serological report and in absence of proving the origin of human blood it will not be safe for us to rely the said evidence and to convict the accused/appellant on the basis of same. Moreover the important witnesses PW-4 and PW-14 have also not supported the prosecution case.

13. The cumulative effect of the analysis of the evidence is that the prosecution has failed to discharge the established onus of proving the guilt of the accused beyond reasonable doubt and therefore the benefit of doubt is to be extended to him. Appellant is reported to be in jail since 11.07.11, he be set free forthwith if not required in any other case.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge