

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 254 of 2015

- Dilip Sonwani S/o Mangal Chand Sonwani Aged About 29 Years
R/o Village Rasouta, PS And Tah. Palari, Civil And Rev. Distt.
Baloda Bazar-Bhatapara (C.G.)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through Police Station Palari, District
Baloda Bazar Bhatapara C.G.

---- Respondent

For Appellant	:	Shri Arun Kochar, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board By Justice Pritinker Diwaker

09/08/2018:

This appeal arises out of the judgment of conviction and order of sentence dated 26.11.2014 passed by the III Additional Sessions Judge, Balodabazar in ST No.37/2014 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, Santosh, elder brother of the appellant, was having suspicion in his mind that the appellant has some illicit relation with Hemlata, wife of Santosh. On 20.3.2014 both the appellant and Santosh consumed liquor and Santosh went to sleep in his room. However, at about 11 pm Santosh woke up and saw the

appellant talking to his wife Hemlata and then chased him carrying axe in his hand. Out of fear the appellant fled from there and took shelter in the house of one Ganesh, who was his maternal uncle in relation. However, in the next morning at about 8.30-9.00 Santosh again chased the appellant, on which the appellant while running away entered the house of Sevakram (deceased) and when Sevakram objected to his entry into his house and started shouting, he (appellant) assaulted him with iron (press) and club as a result of which he died. At that time, PW-5 Ku. Varsha, daughter of the deceased, returned from her school, saw the dead body of her father and then she immediately rushed to the house of her neighbour PW-4 Raju Yadav and informed him about the incident. After seeing the dead body, Raju Yadav in turn informed about the same to Shivram Yadav (PW-1) over telephone and also informed other villagers. In the meanwhile, the appellant was confined in the room by bolting the door from outside by one Deendayal. Further case of the prosecution is that number of villagers had gathered there and in their presence the appellant was shouting that it is he who killed Sevakram by assaulting him with iron (press) and club. Soon thereafter the police also reached there and arrested the appellant from the spot. At 10 am FIR (Ex.P/2) was lodged on 21.3.2014 by PW-1 Shivram Yadav, brother of the deceased, against the appellant u/s 302 of IPC. Thereafter, at 10.15 am merg intimation Ex.P/1 was registered at the instance of PW-1. Inquest over the dead body was conducted vide Ex.P/4 on 21.3.2014 and thereafter the dead body was sent for postmortem which was conducted on the same day by PW-8 Dr. S. Sachdev vide Ex.P/14 who noticed as many as 10 lacerated wounds over right eyebrow with orbital bone fracture, over nasal root with nasal

bone fracture, over left cheek, near right nostril with fracture of maxilla, right side of chin with fracture of mandible, left side of upper lip, left side of lower lip, over occipital region with occipital bone fracture, right middle finger, dorsum left palm; contusion over right side of chest and breaking of upper & lower incisor and canine teeth. In his opinion, the cause of death was complication of intracerebral hemorrhage due to head injury and that the death was homicidal in nature.

On 21.3.2014 memorandum of the accused/appellant was recorded vide Ex.P/6 which led to recovery of one iron (press) and one club having stains like blood. However, there is no FSL report on record. While framing charge, the trial Judge charged the appellant u/s 302 of IPC.

03. So as to hold the accused/appellant guilty, the prosecution examined 11 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.

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 conviction of the appellant is based on circumstantial evidence but none of the circumstances from which inference of guilt of the appellant could 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) the main piece of evidence against the appellant is the so-called extra-judicial confession of the appellant before PW-1 Shivram Yadav, PW-2 Harishanka Sahu, PW-3 Dinesh Yadav and PW-4 Raju Yadav, however, a bare perusal of their statements would reveal that they have falsely implicated the appellant.

(iii) it appears that while the appellant was running away from his brother Santosh and entered the house of Sevakram to save himself, the person who had killed the deceased, taking advantage of the situation, might have bolted the door from outside to implicate him in this offence.

(iv) that the appellant had taken a specific plea in his statement u/s 313 of CrPC that when he was passing through the house of the deceased, he saw a girl coming out from the house of the deceased and when he entered the said house, somebody bolted the door from outside and as such, he has been falsely implicated.

(v) that PW-5 Versha who first saw the dead body of the deceased in the house, has categorically stated that when she entered the house, no one was there inside the house nor any voice was being raised by anyone. She also denied to have seen anyone assaulting the deceased. She states that after seeing the dead body, she informed Raju Yadav (PW-4) about the same. In these circumstances, it appears that the appellant has been falsely implicated. Even otherwise the offence of extrajudicial is considered to be very weak in nature unless the same is corroborated by other cogent evidence.

(vi) though on the memorandum of the appellant (Ex.P/6), seizure of

certain articles has been made but in absence of FSL or serological report, the seizure loses its significance.

06. On the other hand, State counsel supporting the impugned judgment submits that conviction of the accused/appellant is strictly in accordance with law as the prosecution has duly proved making of extrajudicial confession by the appellant before the witnesses.

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

08. PW-5 Versha Yadav is daughter of the deceased, aged about 10 years. The trial Court after satisfying itself about the competency of the witness to understand the questions being put to her, proceeded to examine her. She states that her father was murdered in the morning, when she returned from school she found him dead and then went to the house of Raju (PW-4), informed him about the murder whereupon he came to her house. She states that at that time no one was shouting in his house nor was telling anything. She states that the appellant has committed murder of her father by assaulting him with iron and club but she has not seen him doing so. However, in cross-examination she admits that since all in the house were accusing the appellant of commission of murder, she is also taking his name as perpetrator of the crime.

09. PW-4 Raju Yadav, has been examined as another witness to extra-judicial confession made by the appellant. He states that on the fateful day PW-5 Versha Yadav came to him running, informed him about killing of her father and within 15 minutes he along with his

brother Dinesh Yadav (PW-3) reached the house of the deceased and found the dead body of Sevakram lying in the house. Thereafter, they informed about the same to their grand-father Shivram (PW-1) over telephone from the grocery shop of one Kanhaiya (not examined) and then returned to the place of occurrence. However, by that time, crowd had gathered there, the appellant was confined in the house of the deceased from where he was shouting that he had killed the deceased. In cross-examination, he admits the suggestion that after being informed by PW-5 Versha Yadav, he along with his brother Dinesh reached the spot within 15 minutes and by that time, there was no other person present in the said house, they watched the dead body for about 10 minutes and thereafter went out to inform their grand-father. Even during this period also no person came there and police came to the spot after about half an hour of their arrival. He admits that he has not seen anyone assaulting the deceased and since the appellant was confined in the room, they took him as perpetrator of the crime and that he is also not aware as to who confined him in the room and as to when Deendayal reached the place of occurrence.

10. PW-1 Shivram Yadav, other important witness of the prosecution before whom extra-judicial was made by the appellant, states that when he reached the house of the deceased, the accused/appellant was confined in the room and he was shouting that it is he who had killed the deceased. He is also lodger of FIR (Ex.P/2) and merger intimation (Ex.P/1). He states that the appellant was confined in the room by his nephew Deendayal by bolting the door from outside. He further states that after about 15-20 minutes, the police also reached

there, arrested the appellant and took him to police station.

11. PW-2 Harishankar is another witness of the prosecution before whom extra-judicial confession was allegedly made by the appellant. He states that the appellant was confined in the room, crowd had gathered and the appellant was shouting that he had killed the deceased by iron and club. He states that before he could reach the place of occurrence, police had already reached there about two minutes before.

12. PW-3 Dinesh Yadav reached the place of occurrence after the incident had taken place and found the appellant confined in the room. In para-14 he admits that the appellant himself was saying that he had killed the deceased, and that when the villagers gathered there were shouting to beat the appellant, he (appellant) was asking them as to why they have confined him and requesting them to open the door.

13. PW-6 Narmada Bai reached the place of occurrence after the incident had taken place. PW-7 Ganesh Ram has turned hostile. PW-8 Dr. S. Sachdev conducted postmortem on the body of the deceased on 21.3.2014 vide Ex.P/14 and noticed as many as 10 lacerated wounds over right eyebrow with orbital bone fracture, over nasal root with nasal bone fracture, over left cheek, near right nostril with fracture of maxilla, right side of chin with fracture of mandible, left side of upper lip, left side of lower lip, over occipital region with occipital bone fracture, right middle finger, dorsum left palm; contusion over right side of chest and breaking of upper & lower incisor and canine teeth. In his opinion, the cause of death was complication of intracerebral hemorrhage due to head injury and that the death was homicidal in nature. PW-9

Munnibai, wife of the deceased, was not present in the house in question at the time of occurrence and had gone to jungle. PW-10 Bhuneshwar Prasad Sahu, Patwari, prepared the spot map Ex.P/9. PW-11 Brajesh Kumar Tiwari, investigating officer, has supported the prosecution case.

14. 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 made before the PW-1 Shivram Yadav, PW-2 Harishankar Sahu, PW-3 Dinesh Yadav & PW-4 Raju Yadav, and recovery of certain incriminating articles at his instance.

15. In the case of **Gura Sinah v. State of Rajasthan (2001) 2 SCC 205**, the Hon'ble Supreme Court held 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.'

16. 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."

17. 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.

18. In the case in hand, as per prosecution case itself, dead body of the deceased was first seen by his daughter PW-5 Ku. Versha Yadav who states that when she reached her house and saw the dead body, at that time nobody was present in her house and that she did not hear anyone shouting in her house. She immediately informed about the incident to PW-4 Raju Yadav who too has categorically stated that after about 15 minutes when he reached the place of occurrence, nobody was there in the house of the deceased and that he watched the dead body for about 10 minutes and even then he could not see anyone there during that period.

19. PW-2 Harishankar, a witness to extra-judicial confession, has admitted the fact that when the alleged extra-judicial confession was being made by the appellant, police was present there and that he reached the place of occurrence after the police. Thus, considering the fact that this witness reached the place of occurrence after arrival of the police at the spot and the extra-judicial confession was made by the appellant in presence of police, such confessional statement loses its efficacy.

20. PW-1 Shivshankar Yadav has stated that the appellant was confined in the house of the deceased by one Deendayal by bolting the door. However, said Deendayal has not been examined by the

prosecution. PW-3 Dinesh Yadav in his cross-examination has admitted the fact that when he alongwith Raju Yadav (PW-4) reached the house of the deceased, nobody was present in the said house and that Deendayal reached there after about five minutes of their arrival. He has further admitted the suggestion that when the villagers were shouting for beating the appellant, the appellant was requesting them to open the door and saying as to why he has been confined.

21. Thus, having carefully examining the evidence of the witnesses to extra-judicial confession in the light of principles of law governing the field, we do not find that the same was made voluntarily, without any pressure or coercion and rather it appears to have been made out of fear and under the pressure of the villagers who had surrounded the house in question where the appellant was confined and were shouting for beating the appellant. In these circumstances, it would not be safe for this Court to uphold the conviction of the appellant on the basis of such extra-judicial confession.

22. As regards the other circumstance i.e. seizure of certain incriminating articles at the instance of the appellants, though on the memorandum of the accused/appellant (Ex.P/6) one iron (press) and one club having stains like blood have been seized, however, in absence of FSL or serological report, it cannot be said with certainty that these articles had any nexus with the crime in question. Thus, the prosecution has also failed to prove this circumstance to the hilt to substantiate involvement of the appellant in the crime in question.

23. On the basis of aforesaid discussions, we are of the opinion that the prosecution has not been able to prove guilt of the appellant in the

present crime based on the evidence adduced by it beyond all reasonable doubt and being so, he is entitled to be acquitted of the charge by giving him benefit of doubt.

24. In the result, the appeal is allowed and the impugned judgment is hereby set aside acquitting the appellant of the charge under Section 302 of IPC by extending him benefit of doubt. He is reported to be in jail, therefore, he be set free forthwith if not required to be detained in connection with any other offence.

Sd/

(Pritinker Diwaker)
Judge

Sd/-

(Gautam Chourdiya)
Judge