

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 605 of 2016**

- Sanjeet Kumar S/o Bhot Ram, aged about 20 years, R/o village Karondha, Parasatoli, P.S. Kusmi, district Balrampur - Ramanujanj (C.G.).

---- Appellant**Versus**

- State of Chhattisgarh Through : Through the Station House Officer, Police Station Kusmi, Civil and Revenue District - Balrampur - Ramanujanj (C.G.)

---- Respondent

For Appellant	:	Shri Manoj Jaiswal, Advocate.
For Respondent/State	:	Shri Rahul Tamaskar, P.L.

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

Judgment on Board by Pritinker Diwaker, J**10/08/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 18.02.2016 passed by the Additional Sessions Judge, Ramanujanj (C.G.), in Sessions Trial No. 396/2012 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo rigorous imprisonment for life with fine of Rs.500/-, plus default stipulation.

02. As per the prosecution case, accused/appellant married one Radhamuni (PW/4) but their marriage was not liked by the family members of deceased Devanti (mother-in-law of the appellant) as they were of different castes. Deceased also used to play witchcraft which was disliked by the accused/appellant as a result

of which he was looking for an opportunity to eliminate his mother-in-law. It is said that in between 11.08.2012 to 12.08.2012 when the deceased was in forest for collecting mushroom (खुखडी), the accused/appellant reached there and caused number of axe injuries to the deceased resulting in her death. Further case of the prosecution is that the accused/appellant made extra-judicial confession before Radhamuni (PW/4), wife of the accused/appellant, that he had killed the deceased. The body of deceased was seen by Tijan (PW/5), who in turn, informed the same to Sukhdev (PW/7) at whose instance dehati merg (Ex.P/22) was registered on 14.08.2012 followed by merg intimation (Ex.P/1). After merg inquiry, inquest on the body of deceased was conducted on 14.08.2012 and dead body was sent for postmortem examination to Community Health Center, Kusmi vide Ex.P/19-A which was conducted by Dr. T. Sai (PW/14) vide report (Ex.P/19) noticing following injuries:-

- (i) Bruise on right temporal region of scalp in the size of 6 x 5 cm irregular having brown black colour.
- (ii) Incised wound on left side of chin in the size of 5 x 3 cm regular margin having brown black colour, mandible bone was cut.
- (iii) Cut injury on neck and head was completely chopped off.
- (iv) All skin, muscles, trachea, 3rd cervical vertebra, oesophagus, jugular vein, carotid artery, spinal cord were cut.
- (v) Scalp hair were easily pulled out and eye balls were eaten by maggots.

Autopsy Surgeon opined the cause of death of deceased to be asphyxia and excessive hemorrhage due to cut throat injury of

neck and death was homicidal in nature.

03. On the basis of dehati nalisi (Ex.P/22), FIR (Ex.P/23) was registered on 15.08.2012 against the accused/appellant under Section 302 IPC, 4 and 5 of Chhattigarh Tonahi Pratadana Nivaran Act, 2005 (for short 'the Act'). Memorandum of the accused/appellant was recorded on 15.08.2012 vide Ex.P/11, based on which axe and towel were seized vide Ex.P/14 and P/15 respectively, however, there is no FSL report on record to confirm presence of blood thereon. After filing of charge sheet, the trial Court framed the charge against the accused/appellant under Section 302 IPC.

04. In order to prove complicity of the accused/appellant in the crime in question, the prosecution has examined 15 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

05. After hearing the parties the Court below has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment. Hence, this appeal.

06. Counsel for the accused/appellant submits :

(i) That there is no eye-witness to the occurrence and the conviction of the accused/appellant is based on circumstantial evidence but none of the circumstances from which the inference of guilt of appellant can be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellant who committed the murder.

(ii) That the only piece of evidence against the accused/appellant

is so called extra-judicial confession made before Radhamuni (PW/4), wife of the accused/appellant, but considering the fact that evidence of extra-judicial confession is being treated as weak type of evidence, the same alone cannot be made basis for conviction. Learned counsel for the appellant has placed his reliance on the decision of the Apex Court in the matter **Baldev singh V. State of Punjab** reported in **2009 AIR SCW 3730**.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same. He further argued that in natural course, on 14.08.2012 itself when the body of deceased was found in the forest, the accused/appellant voluntarily made extra-judicial confession before PW/4, who has duly supported the prosecution case. He has also argued that statement of PW/4 in the Court remained unchallenged and nothing could be elicited from her to discredit her testimony. It has been also argued that factum of extra-judicial confession made by the accused/appellant was informed by PW/4 to number of witnesses including Ku. Saraswati Bai (PW/3), daughter of the deceased and Nanhu (PW/2), father of PW/4, who have also supported the prosecution case stating that they were informed by PW/4 about the extra-judicial confession made by the accused/appellant.

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

09. Radhamuni (PW/4), wife of the accused/appellant, daughter of PW/2 and the deceased, has stated that she belongs to Nagesiya caste, whereas the accused/appellant belongs to Uraon caste but

her parents were happy with the said marriage. After marriage, the accused/appellant used to call her mother 'Dayan', 'Tonhi' and her mother never used to visit appellant's house. She has further stated that the day on which the body of her mother was found, the accused/appellant came to her and informed that it is he who has killed her mother by slitting her neck. It was further informed by the accused/appellant that he was looking for an opportunity for last six months to kill the deceased, the offence was committed in the forest when the deceased was collecting mushroom and has reiterated that he killed the deceased as she was Dayan and Tonhi. This witness has also stated that when she reached the place of occurrence, she met her father PW/2 and other villagers to whom she also informed that the accused/appellant made extra-judicial confession before her about the commission of offence. In cross-examination, her statement with regard to extra-judicial confession of the accused/appellant remained unchallenged.

10. Nanhu (PW/2) is father of PW/4 and husband of the deceased. He has stated that the accused/appellant used to call deceased as 'Dayan'. When the deceased had gone to the appellant's house once, he (appellant) called his wife (deceased) as Dayan, on which, the deceased asked as to why he (appellant) had kept her daughter as wife. He has further stated that his daughter PW/4 had informed him that the deceased is missing from three days and, thereafter, her body was found in the forest. This witness, in para 8, has stated that after coming to know about the incident, his daughter PW/4 also reached the place of occurrence, who informed him and other villagers that the accused/appellant made extra-judicial confession before her (PW/4) that when the deceased had gone to forest for collecting mushroom, it is he who killed the deceased by

causing injuries by axe on her neck. Almost similar statement has been made by Saraswati Bai (PW/3), daughter of the deceased, who too has stated that she was informed by PW/4 that the accused/appellant made extra-judicial confession before her stating as to the manner in which the deceased was done to death.

11. Chamru Nagesiya (PW/1) is the lodger of merg intimation (Ex.P/1). Tijan (PW/5), Dharamsai (PW/6) - witnesses to inquest (Ex.P/7), Sukhdev (PW/7) - villager, Chandan Ram (PW/8), Arun Bhagat (PW/9) - witness to memorandum of the accused/appellant (Ex.P/11) and seizure (Ex.P/12 to P/15), Zapo Bai (PW/10) and Ajit Kujur (PW/11), have turned hostile. Santosh Kumar (PW/12) is the Patwari, who prepared spot map vide Ex.P/3. Fulchand (PW/13) - Constable, assisted in the investigation. Dr. T. Sai (PW/14) conducted postmortem examination on the body of deceased and gave his report (Ex.P/19) opining the cause of death of deceased to be asphyxia and excessive hemorrhage due to cutting of throat. A. Kujur (PW/15) is the Investigating Officer, who has duly supported the prosecution case.

12. After considering the entire facts of the case it emerges from the evidence on record that the entire case was based upon circumstantial evidence of extra judicial confession.

13. Close scrutiny of the evidence available on record makes it clear that in between 11.08.2012 to 12.08.2012, the deceased was killed in the forest when she had gone to collect mushroom. On 14.08.2012 the body of deceased was found. On 14.08.2012, merg intimation (Ex.P/1) was recorded at the instance of PW/1 and on 14.08.2012 itself the accused/appellant made extra-judicial confession before PW/4, wife of the accused/appellant. After the

extra-judicial confession of the accused/appellant, PW/4 reached the place of occurrence and had informed the villagers including her father PW/4 and sister PW/3 about the extra-judicial confession of the accused/appellant. The statement of PW/4 with regard to extra-judicial confession of the accused/appellant has remained unchallenged. The defence has cross-examined this witness but has not been able to elicit anything from her to discredit her testimony especially to the fact that the accused/appellant had not made any extra-judicial confession before her. The version of this witness is well corroborated by the evidence of PW/2 and PW/3, who have categorically stated that she had informed them about the extra-judicial confession made by the accused/appellant and both of them have duly supported the prosecution case. The version of PW/4 also gets corroboration by the memorandum of the accused/appellant (Ex.P/11) wherein he has assigned the reason for causing death of the deceased that he used to call deceased as Dayan and Tonhi and that he was never liked by the deceased for being a person of different caste. It is settled legal position that extra-judicial confession is a weak type of evidence and if the entire case of the prosecution hinges upon it, a greater degree of care and caution is required to be taken by the Court while appreciating the evidence.

14. Now the question arises whether the conviction can be founded mainly on the evidence of extra judicial confession. Accepting the admissibility of the extra-judicial confession, 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.”

15. 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.”

16. In view of the above, we are of the considered opinion that extra-judicial confession regarding causing death of the deceased was voluntarily made by the accused/appellant before Radhamuni (PW-4). This evidence of extra-judicial confession by accused before this witness inspire confidence of the Court as the same stands corroborated by the evidence of PW/2, PW/3, memorandum of the accused/appellant (Ex.P/11) and the fact that accused/appellant

used to call deceased as Dayan and Tonhi and her body recovered from the forest. In other words, 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 and on the basis of that, the accused/appellant can be convicted. The case law **Baldev** (supra) relied upon by learned counsel for the appellant being distinguishable on facts is of no help to him.

17. Thus in view of the aforesaid factual and legal position this Court is of the considered opinion that the prosecution has collected sufficient evidence to hold the accused/appellant guilty for committing the murder of his mother-in-law and that way the Court below has also been justified to arrive at a conclusion slapping conviction on the accused under Section 302 IPC. Accordingly, the judgment impugned calls for no interference in this appeal.

18. Appeal thus being devoid of any substance is liable to be dismissed and it is hereby dismissed. Judgment impugned is affirmed. Being already inside, no order in respect of arrest etc. of the accused is necessary.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge