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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24.03.2018

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CRL. A. 584/2017

JATIN DHIMAN

..... Appellant

Through : Mr. Ajay Verma,
Ms. Katyayini and
Ms. Sudha Reddy, Advs.

versus

STATE

..... Respondent

Through : Mr. Amit Ahlawat, APP.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

HON'BLE MR. JUSTICE A.K. CHAWLA

A.K. CHAWLA, J. (ORAL)

Aggrieved of the judgment of conviction for the offences under Section 302 and 201 of the Indian Penal Code and the order of sentence of imprisonment of life with fine of Rs.5,000/- ID 3 months RI for the offence under Section 302 IPC and 7 years RI with fine of Rs.3,000/- ID 1 month RI for the offence under Section 201 IPC, the appellant-convict has preferred the appeal in hand.

2. Appellant was accused of causing murder of his father Sh. Vijay Dhiman and then, setting the dead body to fire using

kerosene. As per the prosecution case, the appellant, who was 19 years of age, had strangled his father on the midnight of 7-8 October, 2012 at their House no. 17, Gali No.3, Press Enclave, Vikas Nagar, Delhi and on the night of 9th October, 2012 set the dead body to fire using kerosene. SI Ram Bhau, who was on the patrolling duty on the intervening night of 9-10 October, 2012, on noticing the smoke coming out from the house made PCR call at no. 100 at about 3.20 midnight. Thereafter, the Police and the Fire Brigade swung into action. At the spot, the main gate of the house was found locked and on entering the house from the rear gate, which was lying open, TV, Sofa and other articles were found burning. A dead body in burnt condition was also found lying there. It is the case of the prosecution that, later, during the day i.e. 10.10.2012, the appellant came to the PS and confessed his guilt. On the completion of the investigations, the challan came to be filed. The appellant was tried for the offences under Section 302/201 IPC and convicted.

3. Prosecution in support of its case examined PW1 Sh. Vijay Kumar Jha; PW2 Sh. Amit Sethi; PW3 Sh. Vijender Kumar; PW4 Sh. Vinay Dhiman; PW5 SI Azad; PW6 Sh. Narender Singh; PW7 Ct. Rajesh; PW8 Insp. Mahesh Kumar; PW9 Ct. Jai Singh; PW10 Sh. Sunny; PW11 Dr. Manoj Dhingra; PW12 Ct. Manish; PW13 Ct. Mandeep Kumar; PW14 SI Rambir; PW15 W/HC Anita; PW16 SI Ram Bhau; PW17 Insp. Manoj Kumar;

PW18 HC Vijender; PW19 Sh.Pankaj Gupta; and, PW20 Insp. Surya Prakash and closed its evidence.

4. Incriminating evidence was put to the appellant-convict in his statement under Section 313 Cr.P.C. Appellant pleaded innocence and alleged false implication and took the plea of *alibi* stating that on the date of the incident, he was not at home and had gone to the house of his maternal aunt (Mausi) and that, his father was alone in the house. No defence evidence however came to be led by the appellant. Vide the impugned judgment, the appellant was convicted for both the offences and the impugned order of sentence came to be passed by the trial Court.

5. In the submissions of the learned Counsel for the appellant, it was a case of suicide. He submitted that the appellant was away to his Mausi's (aunt's) place when the incident took place and thus, took the plea of *alibi*. Assailing the impugned judgment, adverting to the postmortem report Ex.PW11/A, it was contended that as per the postmortem report, no external injury other than burn injury could be observed and that, no smell of any inflammable substance was found. In his submissions therefore, when the postmortem report Ex.PW11/A does not indicate the burning of the dead body by use of any inflammable substance like kerosene, the prosecution story for use of any kerosene either in causing death or for the destruction of the evidence fails. It was also submitted that there was no worthwhile and reliable evidence on record to prove that the appellant had purchased

kerosene much less from PW1 Vijay Kumar Jha, at any point of time. It was contended that PW1 was not a trustworthy and reliable witness. To assail the veracity of the testimony of PW1 Vijay Kumar Jha, learned counsel for the appellant drew attention of this Court to the testimony of PW1 during cross, where he admits that he was not a seller of kerosene oil. Attention of the Court was also drawn to the fact that PW1 during cross has also admitted that prior to 09.10.2012, he had not sold kerosene to appellant. It was thus contended that when PW1 was neither the seller nor had sold kerosene to the appellant at any point of time prior to 09.10.2010, the appellant's just reaching to him and getting the kerosene, which is said to have been used for burning of the dead body, is highly improbable and unreliable. Then, advertng to the fire report of Delhi Fire Service Ex.PW3/A, which records that some smell like kerosene was also felt at the spot, it was contended that such part came to be recorded later is visible on the bare perusal of report and it discredits the prosecution story for the kerosene having been used in the incident. Lastly, it was contended that the disclosure statement Ex.PW9/F is inadmissible in evidence and cannot be used against the appellant as extra-judicial confession.

6. In the submission of Id. Addl. Public Prosecutor, PW1, PW2 and PW6 were independent public witnesses and there is nothing on record to show that they had any enmity with the appellant to falsely implicate him and that, their unshaken

testimonies by itself, are sufficient to connect the appellant to the commission of the offences in question. Also in his submissions, the appellant had made voluntary extra-judicial confession by coming to the Police Station all by himself shortly after the incident came to the light. It was also contended that there was no circumstance to indicate that the deceased had committed suicide. In his submission therefore, there was no merit in the contention that the deceased committed suicide.

7. Unfortunate event unfolded with PW-16 SI Ram Bhau, who was on patrolling duty on the intervening night of 9/10.10.2012, noticing smoke coming out of the house of the deceased and the appellant. During cross, he has deposed for having noticed the smoke coming out of the house at about 3.15 am. DD entry no. 7A Ex.PW14/A, which came to be recorded at 3.20 p.m. by PW14 SI Rambir at PS, also corroborates the unshaken deposition of PW16 that on the fateful night he had noticed smoke coming out of the house where the incident took place and had informed the police control room.

8. PW3, a sub-officer of Jwalapuri Fire Station, in his unchallenged and unrebutted deposition has deposed that on 10.10.2012, on the receipt of information of fire at about 3.25 a.m., a fire brigade under his supervision had reached at the spot, where the room was found under fire and that, they doused the flame and reached the room after covering themselves with blankets and found that a body was lying in the room. He has

also deposed for the presence of smell of kerosene in the room and had proved his report Ex.PW3/A. His such testimony is wholly unchallenged and unrebutted. Therefore, the contention raised by the learned counsel for the appellant that any addition or alteration as regards the smell of kerosene came to be made in the report Ex.PW3/A at a subsequent point of time, is wholly meritless. Suffice to say, inspite of the opportunity granted to cross-examine PW3, not even a suggestion for any part of the report Ex.PW3/A having been tampered with later, has come to be given to PW3. The prosecution's another material witness PW16 besides deposing to the similar effect has also deposed that the plastic container of kerosene oil having about one and half litre besides half burnt clothes of deceased Vijay Dhiman were seized vide memo Exs.PW9/A and PW9/B, respectively. Though, during cross, this witness was unable to state either the size or the colour of the can, his such inability by itself cannot be construed to belie his deposition on the vital aspects. More so, for the reason that there is nothing to show that he was not a natural witness and had any ulterior motive. PW1, who runs a grocery shop/general store has also identified the can Ex.P1, which he sold to the appellant with kerosene oil. The categorical deposition of PW1 that he had sold the can Ex.P1, which contained kerosene oil, to the appellant on 09.10.2012 in the evening at about 9-10 p.m., though cross-examined, is unshaken and unrebutted. The bald suggestion given to him during cross that he was a planted witness *ipso facto*, does not cast any shadow of doubt as to the

veracity of his deposition. A mere fact that he sold kerosene unauthorizedly does not discredit his deposition. Contention raised by the learned counsel for the appellant on such aspect is therefore wholly meritless. Established facts and the circumstances leave no doubt that kerosene, which was sold by PW1 to the appellant, was used in the incident.

9. PW11, one of the doctors conducting postmortem, has proved the postmortem report Ex.PW11/A. The postmortem report Ex.PW11/A *inter alia* records as follows :

"EXTERNAL GENERAL APPEARANCE

Height :About 5 feet 8 inches.

Built : Cant be ascertained due to charring of the body.

Cornea : Fully burnt. Conjunctiva : Fully burnt.

Natural orifices : Fully burnt.

POSTMORTEM CHANGES

Hypostasis : Cant be ascertained due to charring of the body

Rigor Mortis : Cant be ascertained due to charring of the body

Decomposition Changes : Cant be ascertained due to charring of the body.

EXTERNAL EXAMINATION (Injuries etc.):

1. Thermal burns with charring of body tissue seen all over the body with loss of muscle & bone tissue over neck & front of upper half of chest. The external morphological features of the body has been all lost due to excessive burning & charring of the body. No external injury other than burn injury could be observed due to excessive burning & charring of the body. Hairs over the various body parts are fully burnt and singed at places. No smell of any inflammable substance appreciable. Approximate area of burn is 100% of total body surface area.

INTERNAL EXAMINATION

Neck Structures : Excessive burn injury & charring of tissue seen as described under injury no.1.

Chest:

- Collar Bone/Sternum/Ribs : No fractures seen
- Pleural Cavity : Charred
- Lung Right/Left : All thoracic structure Charred.
- Heart:
 - Pericardium : Charred
 - Myocardium : Charred
 - Coronaries : Charred
 - Others : NAD

Abdomen

- Peritoneum, Peritoneal Cavity : Charred
- Stomach and its contents : Charred
- Intestines: Charred
- Liver : Charred
- Spleen : Charred
- Kidneys Right/left : Charred

Pelvis

- Pelvic cavity : Charred
- Pelvic bones : No fractures observed
- Bladder : Charred
- Uterus, Ovaries, Fallopian Tubes : Not applicable

Spinal Column : Charred

Head :

- Scalp : Charred.
- Skull : No fracture seen to skull bones.
- Brain : Charred

Time since death : Cant be ascertained due to advanced burning & charring of the body.

OPINION: No opinion as to the exact cause of death can be given due to advanced burning & charring of the whole body."

Though, as per the PM report, no opinion as to the exact cause of death could be given due to advanced burning and charring of the whole body, the evidence led and the attending

circumstances, lead to the conclusion that the burning took place after the death of Vijay Dhiman. Had he been alive at the time he got to fire, the spot would have shown some sign of resistance. Nothing to that effect emerges from the record nor has come to be pointed out during the course of hearing. If, it was not so, at least, the extent of charring of body would not have taken place. This lends support to the prosecution case that the deceased had died on the intervening night of 7/8.10.2012 and to which effect, the appellant had made extra-judicial confession. As per the prosecution case, the deceased was strangled to death by the appellant on that night.

10. In *Sahadevan & Anr. vs. State of Tamilnadu*, (2012) 6 SCC 403, the Supreme Court elaborated the principles of law to be kept in mind for placing reliance upon an extra-judicial confession made by the accused, as follows :

"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 : (2011) 3 SCC (Cri) 620] and *Pancho v. State of Haryana* [(2011) 10 SCC 165 : (2012) 1 SCC (Cri) 223] .)

The principles

16. Upon a proper analysis of the abovereferred 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."

In *Munna Pandit vs. State*, (2014) 5 HCC (Del.) 495, advertent to the aspect of the admissibility of extra-judicial confession it was observed, as follows :

"7. Extrajudicial confession when clearly proved by unimpeachable testimony and without slightest doubts, is given high evidentiary value but when confession is propounded and spoken by paid informers, treacherous associates, angry victims or over jealous officers of the law, etc., suspicion is aroused and one must proceed with caution. In such cases prudence and caution is required before acting upon extrajudicial confession and some sort of corroboration by credible evidence should be insisted upon. Thus, when witnesses claims that extrajudicial

confession was made to them, the Court has to examine and decide whether the same should be relied upon. For this confession must be proved like any other fact and its reliability depends upon the veracity of the witness to whom it has been made. The confession should be voluntary and true and should not suffer from inherent improbabilities. Thus, when extrajudicial confession inspires confidence and passes the test of reliability, it can be relied upon but when there are if and buts and suspicious circumstances which create doubt, conviction should not be based solely upon extrajudicial confession and courts insist upon corroboration in form of cogent circumstances to support the prosecution version. Such caution may be justified and prudent when there is reason to suspect that the witnesses who have deposed on the extrajudicial confession were biased or inimical to the accused and may have motive for attributing unstated self-incriminating assertions to the accused. Recently Supreme Court in *Sahadevan v. State of T.N.* [(2012) 6 SCC 403.] , held as under:

“14. It is a settled principle of criminal jurisprudence that extrajudicial 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 extrajudicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extrajudicial 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.

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

‘10. An extrajudicial 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 : 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 extrajudicial confession.'

15.3. Again in *Kavita v. 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 convictions 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 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 extrajudicial confession, this Court in *State of Rajasthan v. Raja Ram* [(2003) 8 SCC 180 : 2003 SCC (Cri) 1965.] stated the principle that: (SCC p. 192, para 19)

'19. An extrajudicial 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 *Aloke Nath Dutta v. State of W.B.* [(2007) 12 SCC 230 : (2008) 2 SCC (Cri) 264.] the Court, while holding the placing of reliance on extrajudicial 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 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; 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 extrajudicial confession, the Court in *Sansar Chand v. 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 extrajudicial confession can never be the basis of a conviction, although ordinarily an extrajudicial confession should be corroborated by some other material. [Vide *Thimma and Thimma Raju v. State of Mysore* [(1970) 2 SCC 105 : 1970 SCC (Cri) 320.] , *Mulk Rajv. State of U.P.* [AIR 1959 SC 902 : 1959 Cri LJ 1219.] , *Sivakumar v. State* [(2006) 1 SCC 714 : (2006) 1 SCC (Cri) 470.] , *Shiva Karam*

Payaswami Tewari v. State of Maharashtra [(2009) 11 SCC 262 : (2009) 3 SCC (Cri) 1320.] and *Mohd. Azad v. State of W.B.* [(2008) 15 SCC 449 : (2009) 3 SCC (Cri) 1082.]

30. In the present case, the extrajudicial 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 extrajudicial confession made by an accused, the Court in *Rameshbhai Chandubhai Rathod v. 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 extrajudicial 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.'

....."

11. Both PW15 W/HC Anita and IO PW17 Insp. Manoj Kumar have deposed that on 10.10.2012 the appellant had come to the PS and confessed his guilt. PW15 has also deposed for having made an entry to that effect against DD no. 19A vide Ex.PW15/A when she was posted at the PS as the duty officer. Though given an opportunity to cross-examine but for a mere suggestion of the DD entry and the FIR being ante-dated, no

challenge to her deposition with respect to the appellant himself coming to the PS and making the confessional statement has been made. In the absence of any such challenge to the testimony of PW15, there is no reason to disbelieve her deposition. IO PW17 has also deposed to the similar effect. He has also deposed that the appellant visited the PS on 10.10.2012 and confessed his guilt to the effect that he had committed the murder of his father by strangulating him on 7.10.2012 at about 12 midnight and on 9.10.2012 when foul smell started coming from the body, he put it to fire and to that effect concerned DO WHC Anita Kumari made an entry in Rojanamacha against DD no. 19A Ex.PW15/A. In his own deposition IO PW17 has also deposed that the appellant had made disclosure statement Ex.PW9/7 confessing his guilt and had led him to kerosene shop from where the appellant purchased kerosene and also took him to the house of PW2 Amit Sethi, who has deposed about the incident of 07.10.2012 amongst the deceased and the appellant. Though cross-examined at length, the deposition of IO PW17 to the said effect is not only unshaken, it has also gone unrebutted. Learned counsel for the appellant on his part, in fact, did not extend any challenge to veracity of such deposition during the course of hearing. Even no reason came to be pointed out for them to depose falsely and/or attribute any ill motive to them for the false implication of the appellant. Even in the statement of the appellant recorded under Section 313 Cr.P.C. no ulterior motive has come to be attributed to any of the material witnesses of the

prosecution including PW15 and PW17. As for the plea of *alibi* appellant has failed to adduce even an iota of evidence. Bald plea of *alibi* therefore is of no avail to the appellant. It is not the plea of the appellant that he has not been living with his deceased father at the time of the incident. Even the independent witnesses PW2 and PW6 have deposed for both of them living together in the house where the incident took place. PW2 has also deposed for having been told by the deceased that the appellant has been utilising the money credited to his account on the demise of his mother extravagantly and that on the same evening of 7.10.2012 at about 12/01 a.m., he had accompanied the deceased to their house where he had advised both of them to behave and stop fighting and that, he had also asked them to part their ways and sleep in separate rooms, after which he had come back to his house. This vital part of his deposition is not only unshaken but unrebutted. There is thus no reason to disbelieve the testimony of such independent public witness PW2 inasmuch as he is a natural witness being a neighbourer. Deposition of this vital prosecution witness lends further support to the extra-judicial confessional statement of the appellant. Conduct of the appellant in buying kerosene from PW1 on 09.10.2012 and the container Ex.P1 having been found at the spot, where the dead body of the deceased was found, in the absence of anything emerging from the record to the contrary, irresistibly leads to the conclusion that it was none else but the appellant, who was involved in the entire episode. Suffice to say, the evidence adduced on record by the

prosecution is not only unshaken but has gone unrebutted and the appellant has miserably failed to prove the plea of *alibi*. If the prosecution story was false, the appellant should have at least explained his whereabouts from 07.10.2012 to 10.10.2012. In totality of the facts and circumstances, there is no reason to disbelieve the extra-judicial confession of the appellant, which is cogent and corroborated by sufficient evidence and the attending circumstances established on record.

12. For the foregoing reasons, we do not see any merit in the appeal and the same is dismissed.

(A.K. CHAWLA)
JUDGE

(SUNIL GAUR)
JUDGE

MARCH 24, 2018

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