

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Appeal No.1123 of 2013Judgment reserved on: 30.11.2021Judgment delivered on:13.12.2021

Parasram S/o Buddhuram Nishad, Aged about 32 years,
 Resident of Village – Matekheda, P.S. Gendatola,
 District-Rajnandgaon, Civil and Revenue District-
 Rajnandgaon (Chhattisgarh)

---- Appellant
 (In Jail)

Versus

State of Chhattisgarh Through Police Station Gendatola,
 District-Rajnandgaon (CG)

---- Respondent

For Appellant:	Mr.Prakash Tiwari, Advocate
For Respondent/State:	Mr.Sudeep Verma, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. Judgment

Sanjay K. Agrawal, J.

1. This criminal appeal under Section 374(2) of the CrPC is directed against the judgment of conviction recorded for offence under Section 302 of the IPC and sentence awarded i.e. imprisonment for life and fine of ₹3,000, in default of payment of fine to further undergo rigorous imprisonment for one year by the Sessions Judge, Rajnandgaon vide impugned judgment dated 28.9.2012 in Sessions Trial No.80/2011.
2. The case of the prosecution is that on 15.8.2011 at 6 p.m. at evening at village Matekheda, Police Station Gendatola, the appellant assaulted his father Buddhuram

(since deceased) by axe and committed his murder, which is punishable under Section 302 of the IPC. It is further case of the prosecution that said Buddhuram had two sons namely Pasasram, appellant herein and one Tikaram (PW-1). Deceased Buddhuram had partitioned his house between him and his two sons appellant-Parasram & Tikaram (PW-1) and each of them were staying in their partitioned portion using the courtyard in front of their rooms, but the appellant was using the courtyard held by deceased Buddhuram, which he was objecting and advised the appellant herein to open his exit door separately for his use and not to use his courtyard, for which meeting was convened in the village and the appellant agreed to open separate exit door from his portion of house, but ultimately he did not do that and in the same evening, he abused and assaulted his father Buddhuram by axe, by which Buddhuram suffered injuries and died. It is also the case of the prosecution that on the date of incident, the deceased second son Tikaram (PW-1) and his wife Puniya Bai (PW-2) both had gone to village Gendatola and when they were returning back, at that time, the accused met them and made extra-judicial confession that he has assaulted his father by axe. When Tikaram (PW-1) and Puniya Bai (PW-2) returned back, they saw that Buddhuram was lying dead in the field adjoining to their house. Thereafter, on 16.8.2011 Tikaram (PW-1) lodged merg intimation vide Ex.P-1 and FIR vide Ex.P-2. The police reached to the

spot and prepared inquest of dead body of deceased Budhhuram vide Ex.P-3. Dead body of deceased Buddhram was sent for postmortem to Community Health Center, Chhuria, where Dr.M.K.Bhuarya (PW-12) conducted postmortem and submitted his report vide Ex.P-14. Thereafter the accused was arrested and on his memorandum statement Ex.P-9, axe was recovered from the appellant vide Ex.P-12. Clothes of the appellant i.e. baniyan and towel were sized vide Ex.P-10. Seized articles were sent for chemical examination vide Ex.P-19 and report is Ex.P-20 and according to which, human blood was found in seized axe and baniyan. The appellant was charge-sheeted in the Court of Judicial Magistrate First Class, Rajnandgaon, who in turn, committed the case to the Court of Session, Rajnandgaon for trial in accordance with law. The appellant / accused abjured the guilt and entered into defence.

3. In order to prove the prosecution case, the prosecution examined as many as 16 witnesses and exhibited 21 documents Exs.P-1 to P-21. Statement of the accused/appellant under Section 313 of the CrPC was recorded, in which he denied guilt. However, the accused has examined three documents Exs.D-1 to D-3 in his defence.
4. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 28.9.2012, held the appellant guilty for

offence under Section 302 of the IPC finding the motive established for said offence and he has made extra-judicial confession to his brother Tikaram (PW-1) & Puniya Bai (PW-2) and from the accused, one axe (article 'A') was seized in which human blood was found and injuries suffered by the deceased could have been caused by axe and accordingly, proceeded to convict the appellant for the aforesaid offence and sentenced him as aforementioned.

5. Mr. Prakash Tiwari, learned counsel for the appellant, would submit that the prosecution has failed to bring home the offence under Section 302 of the IPC beyond reasonable doubt as the prosecution star witnesses Tikaram (PW-1), Puniya Bai (PW-2), Jamin Bai (PW-3) and Garib Ram (PW-4) have turned hostile and they have not supported the prosecution case. He would further submit that extra-judicial confession is a weak piece of evidence, which is not admissible in evidence as Puniya Bai (PW-2) before whom the appellant has made extra-judicial confession has not made statement before the Court and has failed to prove extra-judicial confession. He would also submit that though in axe (article 'A') blood was found, but for want of serologist report, it cannot be held that it was human blood and even blood found in axe was the blood of deceased Buddhuram, as such, the judgment of conviction recorded and sentence awarded deserve to be quashed.

6. On the other hand, Mr.Sudeep Verma, learned counsel for the respondent / State, would submit that though Puniya Bai (PW-2) has not made any statement with regard to extra-judicial confession, but in view of proviso to Section 162(1) of the CrPC, extra-judicial confession is admissible in evidence and it has rightly been relied upon by the trial Court. He would rely upon the judgment of the Supreme Court in the matter of **Bhagwan Dass v. State (NCT of Delhi)**¹ and submit that statement of extra-judicial confession made before the police by Tikaram is admissible in evidence and it has rightly relied upon by the trial Court and as such, the appeal deserves to be dismissed. He would also rely upon the judgment of the Supreme Court in the matter of **Balwan Singh v. State of Chhattisgarh and another**².
7. We have heard the learned appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
8. The first question for consideration would be, whether death of deceased Buddhuram was homicidal in nature, which the trial Court has returned the finding in affirmative.
9. Dr.M.K.Bhuarya (PW-12) has examined the dead body of the deceased and submitted his report Ex.P-14, in which he has clearly opined that the deceased died on account

1 (2011) 6 SCC 396

2 (2019) 7 SCC 781

of excessive bleeding and death was homicidal in nature and it can be caused by axe (article 'A') seized as per memorandum statement of the appellant herein.

10. After hearing learned counsel appearing for the parties and after going through the records, we are of the considered opinion that the finding recorded by the learned trial Court that death of Buddhuram was homicidal in nature is the finding of fact based on evidence available on record, which is neither perverse nor contrary to record.

11. Now, the question is, whether extra-judicial confession made by the appellant to Tikaram (PW-1) vide Ex.P-5 and Puniya Bai (PW-2) vide Ex.P-6 is admissible in evidence in view of proviso to Section 162(1) of the CrPC.

12. Tikaram (PW-1) and Puniya Bai (PW-2) in their statements before the police under Section 161 of the CrPC vide Exs.P-5 and P-6 have stated that the accused has made extra-judicial confession to them by saying that he has caused murder of his father Buddhuram, but when they appeared before the Court, they turned hostile. Leading questions were asked to them. While answering leading questions, Tikaram (PW-1) and Puniya Bai (PW-2) both have clearly refuted of such extra-judicial confession made by the accused to them [Tikaram (PW-1) and Puniya Bai (PW-2)], though Tikaram (PW-1) and Puniya Bai (PW-2) have not supported the fact of extra-judicial confession made to them by the

accused, which they have made before the police while making statements under Section 161 of the CrPC, yet the trial Court has accepted the fact of extra-judicial confession and proceeded to rely upon as an incriminating evidence against the appellant / accused. The statement recorded during investigation is not a substantive piece of evidence and it can only be used for contradicting the maker. True, it is that the statement made to the police is not admissible in evidence in view of Section 162(1) of the CrPC. Since both the star witnesses i.e. Tikaram (PW-1) and Puniya Bai (PW-2) have not supported the case of the prosecution and did not make statement before the Court that any kind of extra-judicial confession was made by the accused to them that he has murdered his father, we are of the considered opinion, it would not be safe to rely upon extra-judicial confession as extra-judicial confession is a weak piece of evidence, particularly Tikaram (PW-1) and Puniya Bai (PW-2) to whom extra-judicial confession is said to have made have not supported the fact of extra-judicial confession being made to them before the Court and turned hostile. Even leading questions having been asked to Tikaram (PW-1) and Puniya Bai (PW-2), they have clearly refuted the fact of extra-judicial confession made by the accused to them, as such, a plea of extra-judicial judicial confession set up by the prosecution and found proved by the learned trial Court is unsustainable in law and

alleged extra-judicial confession cannot be used as an incriminating evidence against the accused / appellant.

13. The Supreme Court in the matter of State of Rajasthan v. Raja Ram³ has held that an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. It was observed as under:-

"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 value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. 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 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. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility."

14. Now the next circumstance that the trial Court has found proved and which has also been made basis for conviction of the appellant is that baniyan (Ex.P-10)

3 (2003) 8 SCC 180

and axe (Ex.P-12) were recovered from the possession of the appellant, on which blood was found. True, it is that pursuant to memorandum statement of the appellant (Ex.P-9), baniyan was seized vide Ex.P-10 and axe was seized vide Ex.P-12, which were sent for chemical examination to the State Forensic Laboratory vide Ex.P-19 and vide report dated 9.4.2012 (Ex.P-20) it has been reported that in baniyan and axe, blood was found. It was further sent to the Serologist & Chemical Examiner, Govt. of India, Kolkatta-16 vide letter dated 9.4.2012, but no report is available in record to connect the appellant that blood found in baniyan and axe was human blood and that of deceased Buddhuram.

15. At this stage, pertinent decision of the Supreme Court on this point in the matter of Balwan Singh (supra) may be noticed herein, in which the Supreme Court has summarized the law on this point after taking into the decision of the Supreme Court (Constitution Bench) in the matter of Raghav Prapanna Tripathi v. State of U.P.⁴. In Raghav Prapanna Tripathi (supra), the Constitution Bench of the Supreme Court has held that in case the prosecution needed to prove that the bloodstains found on the earth or the weapons were of a human origin and were of the same blood group as that of the accused.

16. The aforesaid decision of the Supreme Court i.e. Raghav Prapanna Tripathi (supra) was followed in Balwan Singh

4 AIR 1963 SC 74

(supra) in which it was observed as under:-

"23.From the aforementioned discussion, we can summarise that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood. The court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match."

17. Thereafter, the Supreme Court in Balwan Singh (supra) relying upon the fact that the prosecution has failed to prove that the blood was of human origin declined to rely upon the aspect of recovery of the weapons from the accused therein. It was observed as under:-

"24. In the instant case, then, we could have placed some reliance on the recovery, had the prosecution at least proved that the blood was of human origin. As observed supra, while discussing the evidence of PWs 9 and 16, the prosecution has tried to concoct the case from stage to stage. Hence, in the absence of positive material indicating that the stained blood was of human origin and of the same blood group as that of the accused, it would be difficult for the Court to rely upon the aspect of recovery of the weapons and tabbal, and such recovery does not help the case of the prosecution."

- 18.Reverting to the facts of the present case as the prosecution has failed to prove that the blood found on axe (Article 'A') and baniyan (Article 'B2') was of human blood. These circumstances cannot be held to be found proved against the accused / appellant, whereas it has been taken as an adverse circumstance and incriminating evidence by the trial Court.

19. Furthermore, the trial Court has also held that since lacerated wounds have been found over the body of deceased Buddhuram, which can be caused by the accused / appellant, we are of the considered opinion, unless it is proved that the appellant has caused injuries, it cannot be taken as adverse incriminating circumstance to convict the appellant / accused for offence under Section 302 of the IPC.

20. Finally, reverting to the facts of the present case, since motive for the aforesaid offence has not been proved except there was some dispute on account of opening of exit door between the appellant and the deceased and motive has not been established, particularly the dead body was found in the field near the house of the appellant and extra-judicial confession allegedly made by the accused to Tikaram (PW-1) and Puniya Bai (PW-2) has not been found to be established and blood found on axe (Article 'A') and baniyan (Article 'B2') was not further established to be human blood by Serologist report and that too of deceased Buddhuram. As such, it would be unsafe to convict the appellant for offence under Section 302 of the IPC and the learned Sessions Judge has committed legal error in convicting the appellant under Section 302 of the IPC as the prosecution has failed to prove the offence under Section 302 of the IPC beyond reasonable doubt.

21. For the foregoing reasons, the impugned judgment dated 28.9.2012 passed by the Sessions Judge, Rajnandgaon in Sessions Trial No.80/2011 convicting the accused/appellant for offence under Section 302 of the IPC and sentencing him for life imprisonment and fine of ₹3,000/- cannot be sustained and the same is accordingly set aside. He is acquitted of the charge under Section 302 of the IPC. He is in custody. He be released forthwith, unless required in any other case.

22. The criminal appeal is allowed to the extent indicated herein-above.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Arvind Singh Chandel)
Judge

B/-