

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1191 OF 2018**

Vijay Shankar Chavan.

Age: 41 yrs., Occ. Iron Smith,

R/at. Wadegaon,

Tal: Sangola, Dist. Solapur.

... Appellant.

v/s.

The State of Maharashtra

(At the instance of Sangola Police

Station, Dist. Solapur.)

... Respondent.

Mr. Aashish Satpute, advocate for appellant.

Ms. M.H. Mhatre, APP for State.

CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.

RESERVED ON : APRIL 1, 2021.

PRONOUNCED ON : SEPTEMBER 2, 2021.

JUDGMENT (PER SMT. SADHANA S. JADHAV, J)

1 The appellant herein impugns the Judgment and Order dated 28/8/2018 passed by the Extra Jt. Additional Sessions Judge, Pandharpur in Sessions Case No. 9 of 2014, wherein the Appellant is convicted for the offence punishable under section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Rs. 5,000/-, in default S.I. for 3 months.

2 Such of the facts necessary for the decision of this appeal are as follows:

That on 18/12/2013 Santosh Pawar, brother of Poonam Vijay Chavan lodged a report at Sangola Police Station alleging therein that his sister namely, Poonam was married to the present appellant. The couple was blessed with 3 children. According to him, Vijay Chavan was addicted to Alcohol and used to assault his sister under the influence of alcohol. That on 17/12/2013 at about 6 p.m. Poonam's children had rushed to his house and informed him that when they returned from school, they saw their mother lying in house, blood was oozing from her nose and mouth and their father was also present in the house. According to the children, their father had assaulted their mother with pickaxe as was disclosed by him. Upon receipt of the said information, the informant alongwith his mother and family members had rushed to the house of Poonam. They saw Poonam lying in an unconscious state. There was bleeding from her private parts and the blood had dried and a pickaxe was lying by her side. She was taken to Vitthal hospital of Dr. Lawate and then she was shifted to Civil Hospital, Solapur. On the basis of his report, Crime No.

318 of 2013 was registered at Sangola Police Station against the appellant for the offence punishable under section 307 of the Indian Penal Code. Poonam had succumbed to the injuries on 20/12/2013. The post-mortem notes are proved by P.W. 7 Dr. Santosh Bhui and the same is marked at Exh. 47. After demise of Poonam, Section 302 of the Indian Penal Code was applied.

3 In the present case, on 20/1/2014, confessional statement of the accused was recorded by Judicial Magistrate First Class., Sangola. The same is at Exh. 31. The accused had disclosed before the Magistrate that on the day of the incident, he wanted to go to village Gheradi for some work. He demanded Rs. 50/- from his wife, which she had refused to give and therefore, there was quarrel between them. On the previous day, he claimed to have given Rs. 550/- to his wife and demanded Rs. 50/- out of the said amount. He has admitted before the Magistrate that he is addicted to alcohol and on the day of the incident also in the morning at about 9 to 10 a.m. he had consumed half a bottle of country liquor and in a heat of passion, he had assaulted her with a pickaxe. That he had been deprived of his self control and had used the pickaxe which had come for repair. He

had also admitted before the Magistrate that upon enquiry by the children, he had admitted to have assaulted his wife with pickaxe since she had not given him Rs. 50/-. He had not accompanied his wife to the hospital and had consumed more alcohol.

4 At the trial, the prosecution has examined as many as 7 witnesses to bring home the guilt of the accused/appellant.

5 P.W. 3 happens to be the first informant i.e. Santosh Pawar. It is pertinent to note that P.W. 3, brother of the deceased has resiled from his previous statement and has been declared hostile.

6 Santosh Deshmukh P.W. 4 was officiating as the Judicial Magistrate First Class at Sangola and has proved the contents of the statement recorded under section 164 of the Code of Criminal Procedure, 1973. P.W.4 has deposed before the Court that he has followed the rules contemplated for recording the confessional statement of the accused. That he had afforded opportunity of 3 days before recording of statement. The fact of recording the confessional statement by P.W. 4 stands proved. A suggestion was put forward to

the witness that there was no attestation of the thumb mark of the appellant on his statement recorded under section 164 of the Code of Criminal Procedure, 1973. We have perused the document at Exh. 31. It clearly appears from the record that a thumb impression was obtained by the Learned Judicial Magistrate First Class and thereafter, the said statement is appended with the certificate by the Magistrate.

7 PW. 5 Nandkumar Khudikar has recorded the first information report which is at Exh. 26. PW. 5 has conducted spot panchanama and in that course has noticed blood stains lying on the wall and on the ground. The spot panchanama is at Exh. 8. He had also requested Tahasildar for preparing map of the spot of incident. He arrested the accused on 23/12/2013. There is recovery of pickaxe and his clothes from front of the house of Kondabai Maruti Jagtap. He had deposed before the Court, about the various steps taken by him during the investigation. The accused had volunteered to give confession and accordingly, a report was submitted to J.M.F.C., Sangola on 31/1/2014. The statement under section 164 of the Code of Criminal Procedure, 1973 was filed alongwith charge-sheet. It is categorically stated in the cross-examination that the informant had stated before

the police that pickaxe was lying on the spot besides the injured. The willingness to give a confessional statement was not recorded in writing.

8 The prosecution has examined the son of the accused and the deceased namely Ajay Chavan(PW.6) aged 16 years. He has deposed before the Court that on 17/12/2013 he alongwith his two brothers had returned from school at about 5.45 p.m. They were shocked to see their mother lying on the floor. There were bloodstains on her saree and on the wall. That their mother was unconscious and their father at that relevant time was sleeping in the house and upon enquiry, his father had disclosed to him that on the refusal of their mother to pay him Rs. 50/- for consuming liquor, he had assaulted her by means of pickaxe. Thereafter, alongwith his brothers he had approached his maternal uncle and divulged to him about the statement made by their father. That his father was present in the house when his maternal uncle and his grandmother had arrived and thereafter his father had fled from the house under the pretext of answering the nature's call. It is elicited in the cross-examination that he had not accompanied his mother either to Sangola Hospital nor

Solapur Hospital. It is admitted in the cross-examination that when he entered the house upon returning from school, he had seen that his mother was still groaning. He had denied the suggestion that his mother had disclosed to him that she was assaulted by unknown person.

9 P.W.7 Dr. Santosh Bhui had performed autopsy on the dead body of Poonam. According to P.W. 7, deceased had sustained as many as 8 injuries on her person. He had observed that there was T-shape wound present on the pubic region and the said wound was sutured. He had noticed under scalp hematoma on the fronto parietal temporal region size 16 x 12 cm. and according to him, injury No. 7 in Column No.17 and the internal injuries were grievous in nature. He had opined that cause of death is due to head injury. It is elicited in the cross-examination that he has not mentioned the specific time in the post-mortem report to ascertain the time of death.

10 Learned Counsel for the appellant has vehemently argued that no implicit reliance can be placed on the statement recorded under section 164 of the Code of Criminal Procedure, 1973(Exh. 41).

According to the learned Counsel, the thumb impression of the accused was not attested by the Judicial Magistrate. Secondly, the contents of the statement under section 164 of the Cr. P.C. are not proved by the Magistrate, as he has not deposed before the Court about the contents of the statement under section 164 of the Cr. P.C. It is also vehemently submitted that the accused/appellant has disputed the very recording of the statement under section 164 of the Code of Criminal Procedure, 1973.

11 We have perused the statement under section 313 of the Code of Criminal Procedure, 1973, more particularly, the answer to question No. 77 which reads as follows :

“On the day of incident myself is not present at house. Police not arrested real culprits. I am innocent. I have not given any statement under section 164 of Cr.P.C. Police threatened me and pressurised me to give such type of statement. Leniency be given to me.”

There is inherent inconsistency in the said statement. The defence of the accused is of total denial and according to him, on the day of incident, some unknown persons had entered his house and assaulted

his wife. In fact, the Magistrate has proved that the accused had voluntarily given the confessional statement under section 164 of the Code of Criminal Procedure, 1973.

12 Learned Counsel has vehemently submitted that the thumb mark of the accused was obtained but the said thumb mark was not attested by the Magistrate. In fact, it appears that the Magistrate had followed the mandate of recording of the statement under section 164 of the Code of Criminal Procedure, 1973 and has recorded the statement in accordance with law. In the case of **Dhananjay Reddy v/s. State of Karnataka**¹, the Apex Court has held as follows :

“The function of the Magistrate in recording confession under [Section 164](#) of the Code is a very solemn act which he is obliged to perform by taking due care to ensure that all the requirements of [Section 164](#) are fully satisfied. The Magistrate recording such a statement should not adopt a casual approach as appears to have been shown by Shambulingappa (PW50) in this case. Besides ensuring that the confessional statement being made before him is voluntary and without pressure, the Magistrate must record the confession in the manner laid down by the section. Omission to comply the mandatory provisions, one of such being as incorporated in sub-section (4) of [Section 164](#) is likely to render

1 AIR 2001 SC 1512

the confessional statement inadmissible. The words "shall be signed by the person making the confession", are mandatory in nature and the Magistrate recording the confession has no option. Mere failure to get the signature of the person making the confession may not be very material if the making of such statement is not disputed by the accused but in cases where the making of the statement itself is in controversy, the omission to get the signature is fatal.”

In any case, besides the statement under section 164 of the Code of Criminal Procedure, 1973, there is extra judicial confession on record and the same is reproduced by P.W. 6 to P.W. 1 and the mother of the deceased immediately after the extra judicial confession was made to P.W. 6. The evidence of P.W. 6 in his own words is as follows :

“There were blood stains on the wall and on the Sari of my mother. I tried to wake up my mother, but she did not wake up. My father was sleeping in the house. I asked to my father as to who assaulted to my mother. At that time, he replied that my mother did not pay money for consuming liquor, so he assaulted her by means of pick axe. So I took my brothers and thereafter, we came to my maternal uncle’s house at Sangola. I told to my maternal uncle that my father assaulted to my mother and she did not get up.”

13 In fact, no further investigation was necessary to search for the author of the injuries sustained by the deceased and moreover, the appellant had absconded from the spot and could be arrested only on 23/12/2013. In the case of **State of U.P v/s. M.K. Anthony**², the Supreme Court while allowing the appeal against acquittal has observed as follows:

“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. 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

2 AIR1985 SC 48

and a conviction can be founded thereon.”

Extra Judicial confession was made to the son even prior to registration of FIR. The said disclosure was made in the natural course of transaction i.e. upon enquiry by the son of the accused and the deceased and the same deserves to be relied upon.

14 Learned APP has supported the Judgment passed by the Sessions Court and has submitted that no interference is warranted in the Judgment passed by the Sessions Court.

15 The whole case is based on the confession and extra judicial confession of the accused. The defence of the accused that he was not present at home and that his wife was assaulted by some unknown person is not substantiated. That he was not traced till 23/12/2013 i.e. the day on which he was arrested. The FIR was lodged on the very day of the incident. P.W. 6 has specifically stated that his father was at home and his testimony has not been shattered in the cross-examination. It was incumbent upon the accused to offer an explanation under section 106 of the Indian Evidence Act.

However, his defence is of total denial and the same cannot be taken into consideration. In view of the above discussion, there is no reason to interfere with the judgment of the Learned Sessions Court. Hence, the following order is passed :

ORDER

- (i) The appeal is dismissed.

- (ii) The conviction and sentence imposed upon the appellant vide Judgment and Order dated 28/8/2018 passed by the Extra Jt. Additional Sessions Judge, Pandharpur in Sessions Case No. 9 of 2014 is hereby confirmed.

- (iii) The appeal is disposed of accordingly.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)