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IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.13 of 2011

Dhabaleswar Gouda

....

Appellant

-versus-

State of Odisha

....

Respondent

Advocates, appeared in this case:

For Appellant

:

Mr. P.C. Behera, Advocate

For Respondent

:

Mr. J. Katikia
Addl. Govt. Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

JUDGMENT

15.09.2022

Dr. S. Muralidhar, CJ.

1. This appeal is directed against a judgment dated 12th January, 2011 passed by the learned Additional Sessions Judge (Fast Track Court), Bhawanipatana in Sessions Case No.28/1 of 2010 convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him to imprisonment for life and to pay a fine of Rs.5000/- and in default to undergo rigorous imprisonment (RI) for two years.

2. This Court has heard the submissions of Mr. Purna Chandra Behera, learned counsel appearing for the Appellant and Mr. J.

Katikia, learned Additional Government Advocate for the State-Respondent.

3. The case of the prosecution is that on 13th October, 2009 Anirudha Gouda (PW 1), husband of the deceased and the father of the Accused went to purchase kerosene oil and returned at around 9 am by which time the accused also returned. PW 1 again went out at 10 am and returned at 12.30 pm at which time the accused was sleeping. PW 1 again went for work at around 2 pm. At around 3 pm Arakhita Gouda (PW 7), the younger brother of PW 1 informed PW 1 that the accused was quarreling with his mother Sanjana Gouda, the deceased. By the time, PW 1 reached the house along with Chintamani Nayak (PW 4), Suresh Majhi (PW 5), RajibMajhi (PW 8), KhageswarChandan and Sadhu, they found the dead body of the deceased inside the room and one tangia was lying next to her. The accused was seen moving at a distance and at that point in time PWs 4, 5, 6 and 8 brought the accused and on being asked, he disclosed that he had committed the murder of the deceased. Thereafter, PW 1 reported the matter to the Police.

4. NilamaniParida, the Inspector In-Charge (IIC), Narla Police Station (PS) (PW 10) received the information about the aforementioned murder that had taken place in village Terlo and made an S.D. Entry on 13th October, 2009 and proceeded to the village for the inquiry. He then formally registered P.S. Case No.72 of 2009 under Section 302 IPC. PW 10 seized the

Tangia with wooden handle on its production by PW 1 and prepared a seizure list. On the following day, at 10 am PW 10 held an inquest on the dead body of the deceased, Sanjana Gouda and prepared an inquest report. The body was then sent for post mortem. At 1 pm, he arrested the accused and thereafter seized the wearing apparels. On completion of investigation, a charge sheet was filed against the accused for the aforesaid mentioned offence. The accused pleaded not guilty and claimed trial.

5. For the prosecution, 10 witnesses were examined and none for the defence. The confession of the accused was recorded under Section 164 CrPC.

6. The case having been based on circumstantial evidence, the extra judicial confession by the Appellant before PW 1 formed an important link in the chain of circumstances. The trial Court on an appreciation of the evidence, concluded that the prosecution had proved the guilt of the Appellant beyond all reasoned doubt for the offence under Section 302 IPC.

7. Since one of the key links in the chain of circumstances, is the extra judicial confession of the Appellant, it is important to recapitulate the settled legal position in that regard as explained in the following decisions.

8. The Supreme Court of India in *Magar Singh*(1975) 4 SCC 234 held as under:

“5. The second contention put forward by the learned Counsel for the appellant was that there was no material corroboration of the statement of the approver and the High Court had convicted the appellant on the basis of the extra-judicial confession made by the two accused before some persons but that could not in law be regarded as any corroboration at all, because one tainted evidence cannot corroborate another tainted evidence. The evidence furnished by the extra-judicial confession made by the accused to witnesses cannot be termed to be a tainted evidence and if corroboration is required it is only by way of abundant caution. If the Court believes the witnesses before whom the confession is made & it is satisfied that the confession was voluntary, then in such a case conviction can be founded on such evidence alone as was done in *Rao Shiv Bahadur Singh and Anr. v. The State of Vindhya Pradesh* (1954) SCR 1098 where their Lordships of the Supreme Court rested the conviction of the accused on the extra-judicial confession made by him before two independent witnesses, namely, Gadkari and Perulakar. In the instant case also, after perusing the evidence of P. W. 3 and P. W. 12 we are satisfied that they are independent witnesses before whom both the appellant and accused Surjit Kaur made confession of their guilt and this therefore forms a very important link in the chain of circumstantial evidence. In our opinion the argument proceeds on fundamentally wrong premises that the extra-judicial confession is tainted evidence.”

9. In *Baldev Raj v. State of Haryana 1991 Supp (1) SCC 14* it was held as under:

“9. An extra-judicial confession, if voluntary, can be relied upon by the court along with other evidence in convicting the accused. The value of the evidence as to the confession depends upon the veracity of the witnesses to whom it is made. It is true that the court requires the witness to give the actual words used by the accused as nearly as possible but it is not an invariable

rule that the court should not accept the evidence, if not the actual words but the substance were given. It is for the court having regard to the credibility of the witness to accept the evidence or not. When the court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary, conviction can be rounded on such evidence. Keeping these principles in mind, we find that the confession has been properly accepted and acted upon by the courts below and there is no scope for any doubt regarding the complicity of the appellant in the crime. The confession of the appellant was voluntary. The testimony of PW-4 and PW-5 being responsible persons could not be doubted in the absence of any material to show that they had been motivated to falsely implicate the appellant. The very presence of the appellant and his father with the party of IsharDass throughout the operation upto lodging of complaint at the police station dispel any suspicion against the prosecution case and clearly point to the truthfulness of the same. We are, therefore, unable to find any infirmity in the confession which has been accepted and relied upon by the courts below.”

10. In *Gura Singh v. State of Rajasthan (2001) 2 SCC 205* the legal position was reiterated thus:

“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 M.P.* [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 H.P.* [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.”

11. To summarise the legal position, it is necessary for the Court analyzing the evidence to ensure that the extra judicial confession,

which is by itself is not a substantive piece of evidence, is corroborated by independent witnesses.

12. In the present case, although PW 1 was the father of the accused and husband of the deceased, his evidence is clear and cogent and intrinsically consistent. Although he has been subjected to searching cross examination nothing much could be elicited to doubt the veracity of his testimony. A suggestion was given to PW 1 that the accused perhaps told him that he was acting under the influence of God and that he will preach and teach others. This PW 1 denied flatly.

13. The extra judicial confession made by the accused to PW 1 was corroborated by PWs 5 and 6.

14. It was sought to be contended by the learned counsel for the Appellant that PW 3 who also corroborated the above version about the Appellant confessing to have murdered his own mother, had said so, for the first time in the Court and not before the Police. However, the fact remains that the other witnesses i.e. PWs 4, 5 and 6 have all said that the said accused confessed to having killed his mother. These three witnesses had said so before the police and their evidence lends assurance as to the fact of extra judicial confession having been made by the Appellant.

15. The medical evidence of Dr. Subasis Mahato (PW 2) confirms that the death was homicidal. 16 injuries were found on the dead

body of which 15 were caused by a sharp cutting weapon. Injury No.16 was the fracture of the bone, as a result of assault by means of tangia, which according to PW 2, would have been caused by the tangia. All the wounds were ante mortem in nature and death was due to haemorrhage and shock.

16. This evidence was also unshaken in cross examination. PW 8 spoke about the accused confessing to have committed the crime on being caught. He was not related to the deceased or the accused in any way.

17. The presence of human blood of Group B on the wearing apparels and on the tangia and human blood on the saree of the deceased further, proved the case of the prosecution. The Court is satisfied that the above links in the chain of circumstances, stand satisfactorily proved by the prosecution and form a continuous chain pointing to the guilt of the Appellant and no one else.

18. The only weak link is motive. However, it is plain that at the relevant time, there was no one else in the house other than the Appellant and his mother. Under Section 106 of the Evidence Act the burden is on the accused to explain under what circumstances the deceased died as it was within his special knowledge. In ***State of W.B. v. Mir Mohammad Omar, AIR 2000 SC 2988*** it was held as under:

“36. In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows:

"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference."

19. The accused has failed to discharge the above burden even in his statement under Section 313 CrPC. The absence of proof of motive in the circumstances does not weaken the case of the prosecution.

20. For all of the aforesaid reasons, the Court is satisfied that the impugned judgment of the trial Court suffers from no illegality and therefore, calls for no interference. The appeal is accordingly dismissed, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K.Jena/Secy.