

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO.3/2013

APPELLANT: Shri Ravindra S/o Charandas Atram
Aged about 24 years, Occupation
Labourer, R/o Old Daheli, Teh – Ballarpur,
District – Chandrapur.

...VERSUS...

RESPONDENT : State of Maharashtra, through Police
Station Officer, P.S. Ballarshah, Teh -
Ballarpur, District – Chandrapur.

Mrs. Sonali Saware (Gadhwe), Advocate (appointed) for appellant
Shri N.S. Rao, Additional Public Prosecutor for respondent/State

CORAM : AVINASH G. GHAROTE, J.
DATE : 13/07/2022

ORAL JUDGMENT

1. Heard Mrs. Saware, learned Counsel appointed for the appellant and Shri Rao, learned Additional Public Prosecutor for the respondent.

2. The present appeal challenges the judgment dated 29/10/2012 passed by the Additional Sessions Judge-1, Chandrapur, thereby convicting the appellant for the offence punishable under Section 304-II of Indian Penal Code and sentencing him to suffer

Rigorous Imprisonment for five years and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo Rigorous Imprisonment for two months.

3. The deceased Charandas Atram was the father of the accused. It is the story of the prosecution that on 25/08/2011 at about 8:30 p.m. the accused/appellant had killed Charandas in his house at Mouza Juni Daheli by giving him blows of firewood on his head. Thereafter, the accused is alleged to have tied a rope to the legs of Charandas and dragged the dead body towards a nullah. On the way, he was seen by one Dattu Paika Atram (PW4) who is claimed to have informed the Police Patil, namely, Shamrao Motiram Atram (PW1), who along with other villagers went to the spot where the accused was with the dead body of Charandas. It is claimed that they found the accused dragging the dead body of Charandas in front of the hut of one Waghu Atram (not examined). Charandas had bleeding injuries on his head and face, his clothes were stained with blood. It is claimed that when Police Patil and other persons had made an enquiry with the accused, they were informed by the accused that Charandas had come home in a drunken condition and had started assaulting him and his mother, as a result of which, the

accused picked up a firewood and gave blows on his head due to which Charandas died instantly and he was dragging the body towards the nullah so as to throw it inside the nullah. Accordingly, PW 1 - Police Patil Shri Shamrao Atram is claimed to have informed PI. Yashwant Ombase (PW-8) who came to the spot, prepared the inquest panchanama, spot panchanama and sent the body for post mortem. The blood lying in the house was collected and seized. The blood with soil and simple soil was also seized from the house of the accused. The rope and clothes of the deceased were also seized. Blood sample of the deceased Charandas and accused were taken. During the course of the investigation, it is contended that the stick which was claimed to have been used for the assault was seized at the instance of the accused. The accused as well as Anjanabai Atram his mother (PW-5) were examined, which revealed that they had injuries on their person.

4. In the trial, as many as eight witnesses were examined. The following chart discloses their status.

PW. No.	Name of the witness	Status	Exhibit	Page
01	Shamrao M. Atram	Police Patil before whom extra-judicial confession is made. Lodged Report.	11	30- 32

02	Ramesh P. Mohitkar	Panch witness, spot and inquest – Hostile	14	43-46
03	Vijay T. Randive	Panch witness – Hostile	24	78-80
04	Dattu P. Atram	Hostile	27	85-87
05	Anjanabai C. Atram	Mother of Accused – Hostile	28	88-91
06	Laxmikant V. Akkewar	Circle Officer	29	92-93
07	Subhash M. Kumbhare	Conducted P.M. of deceased	33	96-99
08	Yashwant D. Ombase	Investigating Officer	42	117-122

5. Ramesh Mohitkar (PW-2) was the panch witness for the spot as well as inquest, who was examined at Exh.14 (pg.43). He however, has turned hostile.

6. PW 3 - Vijay Randive was the panch witness for the dead body of Charandas. This panchanama is proved at Exh.17. He, however, denied that Exh.18, which related to collection of the blood sample of deceased Charandas and seizure of clothes of Charandas, Exh.19 seizure of the blood and blood mixed earth and nylon rope and Exh.20 seizure of the clothes of the accused (pg.72), were signed by him or the contents explained to him. The memorandum panchanama (Exh.25) and Exh.26 the seizure panchanama of the burnt stick have been admitted by him. PW 3 – Vijay Randive, was declared hostile by the learned APP and permission was sought to

cross-examine him. In the cross-examination by learned APP, PW 3 – Vijay Randive has denied that any extra-judicial confession was given by the accused. He denied portion marked-A in his statement (pg.155) the extra-judicial confession. He further denied that PW 1 - Police Patil had enquired with the accused as to what has happened. He expressed his inability to identify the rope. In his cross-examination by the learned Counsel for the accused, he admitted that at the time of seizure of rope by police it was lying separate from the dead body and since it was dark the injuries on the dead body could not be seen and for the same reason, he could not read the panchanamas. PW 4 - Dattu Atram has also turned hostile and has denied having made any statements as marked by letters A, B, C, D, E, F (Exh.62 to 67) in his statement recorded by the police. In his cross-examination he states that he had been to Karanji and when he returned, there was no electricity supply and therefore nothing was visible due to darkness.

7. PW 5 - Anjanabai Atram is the mother of the accused and was also declared as hostile by the learned APP. She has also resiled from the statement made by her to the police. In her cross-

examination, by the learned Counsel for the accused, she admitted that as Charandas was assaulting her, she had given a push to Charandas, as a result of which, he had dashed against the frame of the door and sustained bleeding head injury, as a result of which, he could not balance his body and fell at the doorstep from where he got up after some time, went on the cement concrete road and fell there. She denies the presence of the accused at the relevant time in the house and states that the accused came to the house after 15 to 20 minutes of the above incident and thereafter went in search of Charandas and was trying to administer water to him at which time the Police Patil and other villagers came. It is thus apparent that PW 5 – Anjanabai Atram who is claimed to be the eyewitness has turned hostile so also PW - 2, 3 and 4 have also turned hostile, as a result of which, the seizure memorandums and the spot panchanamas have not been proved.

8. PW 6 - Laxmikant Akkewar (pg.92) has drawn the map of the spot of the incident (Exh.32). PW 7 – Dr. Subhash Kumbhare has conducted the post mortem of the deceased and has proved the post mortem report (Exh.39), which indicates that the cause of

death is intracranial bleeding and injury to the vital organ-brain (pg.112). PW - 8 is Yashwant Ombase, the Investigating Officer, who has conducted the investigation and so also the spot/seizure panchanama and recorded the statements of the witnesses.

9. The impugned judgment indicates that the conviction of the appellant/accused is based upon the so-called extra-judicial confession claimed to have been given by the accused to the PW 1- Shamrao Atram. Paras 31 and 32 are indicative of this. It is, therefore, necessary to examine the evidence of PW 1 – Shamrao Atram. PW 1 – Shamrao Atram in his examination-in-chief categorically states that at the time of the incident he was present at his house whereupon one Dattu Atram (PW-4) came there and told him that deceased Charandas was lying outside the village. PW 1 – Shamrao Atram along with Ramesh Mohitkar (PW-2) and Dattu Atram (PW-4) went to the spot and saw the dead body of Charandas. At that time there was no electricity supply. He states that he saw the accused standing nearby in the dark and the dead body of Charandas was lying on the road in front of the hut of one Waghuji Atram. The clothes of Charandas were stained with blood and he

was having a bleeding head injury. PW 1 – Shamrao Atram states that when they called the accused and enquired as to how it has happened, the accused told them that his mother and Charandas had a quarrel, as a result of which, Charandas was beating his mother and therefore, the accused gave a blow of stick on the head of Charandas and thereafter dragged Charandas up to some distance. The statement of PW 1 – Shamrao Atram has been considered by the learned Sessions Court as an extra-judicial confession of the accused upon which and the fact that the stick was discovered at the instance of the accused, the conviction has been awarded. If one peruses the cross-examination of PW 1 - Shamrao Atram, he categorically states that when he made enquiry from the accused, the accused had replied that he had come in search of Charandas and found him lying there and this was immediately prior to the arrival of PW 1 – Shamrao Atram. He further states that when he along with the other persons reached the spot where the dead body was lying, the mother of accused had come there crying. It is, therefore, apparent that the statement attributed to the accused by the PW1 – Shamrao Atram, which has been accepted by the learned Sessions Court as an extra-judicial confession by the accused so as to

convict him, is not a statement which can be relied upon, for the purpose of basing the conviction, as an extra-judicial confession, is a very weak piece of evidence and it requires appreciation with great caution and unless it is established to be proved, made voluntarily and in a fit state of mind and is unambiguous, trustworthy and reliable, the same cannot be relied upon so as to base the conviction upon it. [see : *Sk. Yusuf Vs. State of West Bengal, (2011) 11 SCC 754*, para 28, *Shri Ashok s/o Shamrao Naitam and another Vs. State of Maharashtra through Police Station Officer, Police Station, Dhanora, District Gadchiroli, (Criminal Appeal No.387/2010 decided on 15/01/2014)* and *Union of India and others Vs. Major R. Metri (Criminal Appeal No.2196/2017 decided on 04/04/2022)* (para 44 and 45)]. In the instant case, the cross-examination of PW 1 – Shamrao Atram itself indicates that the statement, which is claimed to be an extra-judicial confession, is contradicted by him by stating that when he made enquiry from the accused, the accused had replied that he had come in search of Charandas and found him lying there. That apart, PW 1 – Sharmrao Atram says that he had gone to the spot with PW 2- Ramesh Mohitkar and PW 4 – Dattu Atram. PW 2- Ramesh Mohitkar in his evidence does not state that

PW 1 – Shamrao Atram had enquired with the accused and that the accused gave an extra-judicial confession to PW 1 – Shamrao Atram of the nature indicated above. PW4 – Dattu Atram who also was with PW 1 – Shamrao Atram does not say so. The statement of PW 1- Shamrao Atram therefore clearly is not worthy of any credence so as to accept what has been stated by him attributed to the accused of being an extra-judicial confession. There is one more reason why the evidence of PW 1 – Shamrao Atram is not creditworthy inasmuch as though in his examination-in-chief he states that at the time of the incident he was at his house and was informed by Dattu Atram about Charandas lying outside the village, however, in his cross-examination he puts out as if he is the eyewitness to the incident and was present when and same had happened. Thus, the entire evidence of PW 1 – Shamrao Atram is filled with contradictions, considering which, the learned Sessions Court ought not to have accepted his statement regarding the so-called extra-judicial confession and relied upon it to base the conviction.

10. Another ground, which has weighed with the learned Sessions Court to base the conviction is the seizure of stick at the

instance of the accused. It would however be material to note that PW 2 – Ramesh Mohitkar and PW 3 – Vijay Randive who are the panch witnesses of the disclosure statements and the seizure of the stick have turned hostile and merely because the Investigating Officer has deposed regarding the recording of the memorandum panchanama at Exh.25 regarding the discovery and seizure of the stick that by itself, cannot be a singular factor to hold that the accused is guilty of the offence. The learned Sessions Court also ignored the evidence of PW 5 – Anjanabai Atram, in which, she states that the accused was not present at the time of the incident but it was she, who had pushed Charandas as he was assaulting her, as a result of which, Charandas dashed against the door, sustained injury on his head, fell down, got up and walked up out of the house.

11. It is, therefore, apparent in view of the above discussion that the judgment of the learned Sessions Court which bases the conviction on the so-called extra-judicial confession claimed to have been made by the accused to PW 1 – Shamrao Atram and the discovery and seizure of the firewood, for the reasons recorded

above, cannot be sustained. The same is, therefore, hereby quashed and set aside and the accused is acquitted of the offence punishable under Section 304-II of IPC. His bail bonds stand called.

12. The criminal appeal is allowed in the above terms. Fees be paid to the learned Counsel appointed for the appellant from the legal aid panel, as per rules.

(AVINASH G. GHAROTE, J.)

Wadkar