



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.234 OF 2020

Suresh s/o Ramchandra Ghodke
Age major, Occu. Nil,
R/o Pachod Ekod, Dist. Aurangabad ... **APPELLANT**

VERSUS

The State of Maharashtra
Through Police Station, Chikalthana
Aurangabad (Rural),
Tq. Dist. Aurangabad ... **RESPONDENT**

.....
Mr. A.V. Indrale Patil, Advocate for appellant (appointed)
Mrs. V.S. Choudhari, A.P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 2nd April, 2024.

Date of pronouncing judgment : 4th April, 2024.

JUDGMENT (PER R.G. AVACHAT, J.)

The appellant was convicted for committing murder of his wife and, therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.5000/- with default stipulation. He is, therefore, before us in this appeal.

2. Facts giving rise to the present appeal are as follows :-

The First Information Report (F.I.R.) (Exh.33) was lodged by brother of Smt. Mirabai (deceased). It is his case that, Mirabai had married appellant way back in 2006. On marriage, she started residing at her matrimonial home along with the appellant and her in-laws. The couple was blessed with two baby girls. The appellant and the in-laws thereafter started ill-treating her.

3. It is further his case that, his father's land was acquired for M.I.D.C. The appellant and the in-laws, therefore, started asking her to fetch Rs.2 Lakhs. She was even ill-treated for having not delivered a baby boy. The informant was once summoned on 11/4/2023 by the appellant's brother (acquitted) and asked to pay Rs.2 Lakhs. He also threatened the informant that if the demand was not met, something strange may happen with Mirabai.

4. It is further the case of the prosecution that, one Sukdeo Sarode, relative of the informant told him on phone on 17th April that Mirabai was lying injured in a field. He, therefore, rushed there and saw Mirabai to have suffered multiple injuries. She was lying in a pool of blood. The F.I.R. was, therefore, registered against the appellant, his brother Sudam, their mother Malanbai and Sudam's wife Mukta.

5. Based on the F.I.R., a crime vide C.R. No.I-49/2013 was registered at Chinthana Police Station for offences punishable under Sections 302, 498(A), 504 read with Section 34 of the Indian Penal Code. Charge sheet was filed before the learned Judicial Magistrate, First Class, Aurangabad. The learned Judicial Magistrate, First Class, Court No.4, Aurangabad committed the case to the Court of Sessions, Aurangabad. The learned Additional Sessions Judge-4, Aurangabad framed charge (Exh.10) against the appellant and three others.

6. The prosecution examined 4 witnesses and adduced in evidence certain documents. The Trial Court, on appreciation of the evidence in the case, acquitted all the in-laws of deceased- Mirabai. The appellant was convicted and sentenced as stated above. The State did not prefer appeal against acquittal.

7. Heard. Learned counsel appointed to represent the appellant would submit that, the case was based on circumstantial evidence. According to him, there was no motive for the appellant to commit murder of his wife. The alleged chain of circumstances is not complete. None of the circumstances have been proved up to the hilt. The appellant

has simply been convicted relying on his extra-judicial confession made to P.W.2 Pandit. According to him, extra-judicial confession is a very weak piece of evidence. The person to whom extra-judicial confession made was not a person of confidence of the appellant. He did not immediately disclose the police the appellant to have made him the extra-judicial confession. There is no evidence as to how the police could reach him to record his statement. Our attention has also been drawn to the oral evidence of this witness and his police statement to indicate that, according to him, he did not make use of a cell phone. He even did not give his cell phone number while his police statement was recorded. His police statement, however, contains his cell phone number.

8. Turning to the appellant's judicial confession made before the Trial Court during recording of his statement under Section 313 of the Criminal Procedure Code is concerned, the learned counsel would submit that, it was immediately retracted. The appellant placed on record a written statement, contending therein that some of the relations and jail inmates told him that if he makes such confession, his other relations (then co-accused) would be acquitted. The learned counsel relied on the case of **Kalinga @ Kushal Vs. State of**

Karnataka By Police Inspector Hubli (Criminal Appeal No.622 of 2023, decided on 20/2/2024).

9. The learned counsel for the appellant also placed on record his written submissions.

10. The learned A.P.P. would, on the other hand, submit the appellant to have made extra-judicial confession to a person of his confidence (P.W.2 Pandit). P.W.2 Pandit was like a Godman. The appellant was his disciple. Even though some inconsistency appears in his evidence as regards non-user of cell phone, his testimony cannot be rejected outrightly. The extra-judicial confession made by the appellant has been reinforced by judicial confession made by him before the Trial Court during recording his statement under Section 313 of Cr.P.C. According to learned A.P.P., each case has to be decided on its facts and circumstances. The learned A.P.P. supports the impugned judgment and order.

11. Considered the submissions advanced. Perused the evidence on record. Also perused the judgment impugned herein.

Let us advert to the evidence on record and appreciate the same.

12. The appellant's wife (Mirabai – deceased) met with homicidal death is a fact not disputed before us. The post mortem examination report of deceased Mirabai has been admitted in evidence. The same indicates her to have suffered following 5 injuries :-

- 1) Chop injury present over parieto occipital region bilaterally of size 20 cm x 1.5 cm., gaping. It is horizontally placed with bevelling of margins. Margins show blood infiltration on dissection displaced fracture of underlying right occipital, right parietal, left parietal and left occipital bone. Fracture margins show blood infiltration with bevelling scalp and skull bone out into the flap going backwards.
- 2) Incised wound in the form of flap present over right occipital region of size 5 x 2 cm, exposing underlying bone. It is situated 5 cm. below injury No.(1). Margins are bevelled with infiltration of blood. No fracture.
- 3) Laceration present over left side of face 1 cm. below left eye 3 x 0.5 cm., vertically oblique. Margins contused. Undisplaced fracture of underlying left zygomatic bone. Fracture margins show blood infiltration.
- 4) Laceration present over left side of chin 2.5 x 0.5 cm. exposing underlying bone, margins are contused, no underlying fracture.
- 5) Post mortem excoriation present over left side of neck (4 x 2 cm. area) right hypochondriac region (4 x 2 cm area), right lumbar (4 x 3 cm. area) right orbital fossa (2 x 1 cm area). Medial aspect of right thigh (12 x 1.5 cm.). Medial aspect of right leg (20 x 5 cm.), Medial aspect of left leg (16 x 2 cm.) and anterior aspect of lower 1/3rd arm and upper 1/3rd of left forearm (12 x 1 cm.). They are brownish, dry with no evidence of vital reaction.

13. As per the post mortem report, Mirabai died of head

injury. The inquest panchanama (Exh.69) corresponds with the injuries noticed on the person of the deceased.

14. The scene of offence panchanama (Exh.54) was drawn immediately. The same indicates the deceased was lying dead just outside her tin shed. The dead body was lying near a water tank.

15. The F.I.R. (Exh.33) was lodged by the brother of the deceased – Mirabai. It was averred in the F.I.R. that, Mirabai had married appellant way back in 2006. On marriage, she started residing at her matrimonial home along with the appellant and her in-laws. The couple was blessed with two baby girls. The appellant and the in-laws thereafter started ill-treating her. It is further his case that, his father's land was acquired for M.I.D.C. The appellant and the in-laws, therefore, started asking her to fetch Rs.2 Lakhs. She was even ill-treated for having not delivered a baby boy. The informant was once summoned on 11/4/2023 by the appellant's brother (acquitted) and asked to pay Rs.2 Lakhs. He also threatened the informant that if the demand was not met, something strange may happen with Mirabai. It is further the case of the prosecution that, one Sukdeo Sarode, relative of the informant told him on phone on 17th April that Mirabai was lying injured in a field. He, therefore,

rushed there and saw Mirabai to have suffered multiple injuries. She was lying in a pool of blood. The F.I.R. was, therefore, registered against the appellant, his brother Sudam, their mother Malanbai and Sudam's wife Mukta.

16. Admittedly, the Trial Court acquitted the in-laws of the deceased. The F.I.R. was lodged based on hear-say. The question is, whether the appellant is author of the homicidal death of his wife Mirabai.

17. We have evidence of P.W.2 Pandit. It is in his evidence that, there was a Hanuman Temple and "*Math*" at village Kachner. Persons from adjoining villages visit his Math for solution of their problems. It is further in his evidence that, the appellant would visit him occasionally. It is further in his evidence that, the appellant had visited his Ashram on 17/4/2023 by 7.30 p.m. The appellant took dinner and slept at the Ashram itself. On the following day, he enquired with the appellant as to the purpose of his visit. The appellant thereupon told him to have killed his wife (Mirabai) by assaulting with iron big strip on the previous day. According to him, the appellant told him that his wife was of loose character. It is further in his evidence that police came to him on 24/4/2023 and recorded his statement.

18. The cross-examination of this witness indicates that, he on his own did not approach the police to report the appellant to have made him extra-judicial confession. It is also not known as to how could police trace him out. According to P.W.2 Pandit, he did not make use of cell phone and, therefore, he did not give cell phone number in his police statement. His statement, however, contains a cell phone number. The investigating officer has testified to have recorded the same as given by P.W.2 Pandit. True, to this extent this witness might not have been speaking truth. Principle of Falsus in Uno Falsus in Omnibus is not applicable in India.

19. P.W.2 Pandit claimed to be a Godman. The appellant happened to be his so called disciple.

20. After recording of prosecution evidence was over, the appellant's statement under Section 313 of the Cr.P.C. was recorded. Each and every evidence appearing against him was put to him. Question Nos.14 to 16 put to him and the answers thereto given by the appellant were as follows :

“Q. 14. It has further come in his evidence that, on 17/4/2013 you visited his Ashram around 7.30 p.m., took dinner and slept there. What you have to say about it ?

Ans.: Yes. I visited.

Q.15. It has further come in evidence that, next day he enquired with you about the purpose of the visit, at that time you told that you have killed your wife with iron strip. What you have to say about it ?

Ans.: Yes. I killed my wife. I told Maharaj about the same. I killed her with iron strip. (लोखंडी पास).

Q. 16. It has further come in his evidence that, you also informed him that your wife was having loose character and he gave understanding to you. What you have to say about it ?

Ans.: Yes. She was 'Chhinnal'.

21. The aforesaid evidence indicates the appellant to have had made extra-judicial confession to a person who was of his confidence. He admitted the same before the Trial Court. His reply to Question No.15 indicates him to have made a confession to a Judicial Officer in the rank of a Sessions Judge (Trial Court). It is true that, later on he put on record his written statement, stating therein that some of the relations and jail inmates told him that if he makes such confession, his other relations (then co-accused) would be acquitted.

22. In our view, putting on record a written statement post recording of his statement under Section 313 of the Cr.P.C. would be nothing but an afterthought exercise.

23. We are in agreement with the submissions made by

the learned counsel for the appellant that extra-judicial confession is a weak piece of evidence. It has to be corroborated in some material particulars. We have perused the judgment of the Apex Court in case of Kalinga @ Kushal (supra). The accused in the said case was acquitted by the Trial Court. The High Court, in appeal, convicted him. It has also been observed in paragraph Nos.14 and 15 as follows :

“14. The conviction of the appellant is largely based on the extra judicial confession allegedly made by him before PW-1. So far as an extra judicial confession is concerned, it is considered as a weak type of evidence and is generally used as a corroborative link to lend credibility to the other evidence on record. In *Chandrapal v. State of Chhattisgarh* [(2022) SCC OnLine SC 705], this Court reiterated the evidentiary value of an extra judicial confession in the following words :

“11. At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. However, this Court has consistently held that an extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the

evidence of extra judicial confession. As held in case of *State of M.P. through CBI v. Paltan Mallah*, the extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused.”

15. It is no more res integra that an extra judicial confession must be accepted with great care and caution. If it is not supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given. The prosecution must establish that a confession was indeed made by the accused, that it was voluntary in nature and that the contents of the confession were true. The standard required for proving an extra judicial confession to the satisfaction of the Court is on the higher side and these essential ingredients must be established beyond any reasonable doubt. The standard becomes even higher when the entire case of the prosecution necessarily rests on the extra judicial confession.”

24. True, the F.I.R. was lodged based on hear-say. There was nothing to indicate the appellant and his relations (in-laws of the deceased) had harassed and ill-treated her with

a view to coerce her to meet their unlawful demand of money. The fact, however, remains, the deceased was found in a pool of blood in the nearby of her residence. The appellant made extra-judicial confession to P.W.2 Pandit. The said extra-judicial confession has been reinforced by the response given by the appellant to the questions put to him in his examination under Section 313 of the Cr.P.C. The same is nothing but a judicial confession made to a Judicial Officer in the rank of a Sessions Judge. The subsequent retraction therefrom without there being any supportive material regarding the reason for retraction shall not prevail. We, therefore, found no reason to interfere with the impugned judgment and order.

25. In the result, the appeal fails. It is dismissed.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-