



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

CRIMINAL APPEAL NO. 427 OF 2022

Raosaheb S/o Maruti Nemane
Age: 40 years, Occu: Labour,
R/o: Pokhari, Tq. Phulambri,
District Aurangabad
[Presently in Jail]

... Appellant

Versus

The State of Maharashtra
Through A.G.P. Office
High Court, Benct at Aurangabad

... Respondent

...
Mr. Bobde Sopan G. and Ms. Shital J. Yadav, Advocates for Appellant
Ms. U. S. Bhosle, APP for the Respondent/State

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

**Reserved on : 17th January, 2024
Pronounced On : 1st February, 2024**

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. This is an Appeal under Section 374 (2) of the Code of Criminal Procedure [for short 'Cr.PC'] against the conviction of the Appellant for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 [for short "IPC"] recorded by the learned Additional Sessions Judge, Aurangabad vide the Judgment and Order dated 23/01/2019, in Session Case No. 263 of 2013 arising out of the Crime No.56 of 2013 registered with Phulambri Police Station on the report lodged by – Sunil Motilal Harne (PW-1).

2. Prosecution's case as revealed from the Police Report is as under : -

2.1 PW – 1 - Sunil Motilal Harne resident of Pokhari, Taluka Phulambri, District Aurangabad, got the information from the Deputy Sarpanch and Police Patil of his village that the Appellant killed his wife in the night in between 10:00 pm to 11:00 pm on 29/04/2013 in his own residence and had buried her body. At that time, PW - 1 was at Aurangabad and after receipt of the information, he went to his village. He verified the information and informed the Police. The Police went to the place of incident where the dead body was buried. The dead body was that of the Appellant's wife. There were several injuries on the dead body. The Crime came to be registered against the Appellant for the offences punishable under Sections 302 and 201 of IPC.

2.2 The necessary panchnamas were carried out, the Appellant came to be arrested, the dead body was sent for postmortem, the statements of witnesses came to be recorded, iron rods came to be seized at the instance of the Appellant and seized muddemal articles were referred for chemical examination and after completion of the investigation, the Appellant came to be charge-sheeted.

3. The learned Trial Court framed the Charge against the Appellant for the offences punishable under Sections 302 and 201 of IPC vide Exhibit-5, to which, the Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the prosecution examined in all eight (8) witnesses and brought on record the relevant documents. After the prosecution closed its evidence, the Appellant's statement came to be recorded under Section 313(1)(b) of Cr.PC. The Appellant denied the prosecution's case. Thereafter, the impugned Judgment came to be passed.

4. It is submitted by the learned Advocate for the Appellant that there is no eye witnesses to the incident and the prosecution could not prove the Charge against the Appellant. He submitted that the prosecution has failed

to bring on record the motive behind the crime. He submitted that the discovery of pipes is not proved. He further submitted that the evidence in the nature of extra judicial confession is liable to be discarded being untrustworthy. He submitted that the impugned Judgment and Order be set aside and Appeal be allowed.

5. It is submitted by the learned APP that there are extra judicial confessions, which implicate the Appellant and the circumstances proved by the prosecution establishes involvement of the Appellant in the crime. She submitted that as the crime was committed in the residence of the Appellant, the burden shifts upon the Appellant to prove that the offence is committed by someone else and not by him. She submitted that the Appeal be dismissed.

6. Admittedly, there are no eye witnesses to the incident. The case is based on circumstantial evidence. The law on the point of circumstantial evidence is well settled. In the case based on circumstantial evidence, (a) the chain of circumstances from which the conclusion of guilt is to be drawn should be fully established (b) the facts so established should be consistent only with the hypothesis of the guilt of the accused (c) the circumstances should be of a conclusive nature (d) the circumstances should exclude every possible hypothesis except the one sought to be proved and (e) there must be a chain of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

7. To prove the homicidal death, the prosecution has examined PW – 5, namely, Dr. Kailas Ukhardaji Zine. His evidence show that from 05/09/1997 he was serving as a Lecturer in Forensic Medicine and Toxicology Department of Government Medical College and Hospital (Ghati) Aurangabad and in the year – 2013, he was promoted as Professor and Head of Department. On 13/04/2013, the dead body of Renukabei w/o

Raosaheb Nemane was referred to him for post mortem. He found twenty three (23) injuries on the body, which were in the nature of abrasion, contusion, laceration, diffused contusion and multiple abrasions on different parts of body. He found the following injuries on palpation mentioned in column No.18 of post mortem, which are as follows:

- “1. Closed, displaced, compound fractures of left humerous at upper and lower end of shaft.*
- 2. Open displaced fracture of distal phalynx of left thumb.”*

8. He gave the probable cause of death as “**shock and hemorrhage due to multiple injuries by hard and blunt object**”. He opined that the manner of death was homicidal. The post mortem report at Exhibit-64 is brought in evidence, which corroborate his testimony. In the cross-examination, suggestions are given that all the injuries were simple in nature and were not the cause of death and the injuries (head injury) may have been caused by fall in the ditch. The evidence of this Doctor - witness show that the death of Renukabei was Homicidal Death.

9. The prosecution has brought on record the evidence in the nature of extra judicial confession by examining PW – 4 [Bajirao Limbaji Pawar] and PW – 6 [Sangeeta Bhagwan Jadhav]. The law on the point of evidentiary value of the extra judicial confession is well settled. Useful reference can be made to the Judgment in the case of **Pritinder Singh @ Lovely vs. The State of Punjab; (2023) 7 SCC 727**. The relevant observations of the said Judgment are as follows:

“ 22. The law with regard to extra-judicial confession has been succinctly discussed in Munna Kumar Upadhyay v. State of A.P., wherein this Court has also referred to its earlier judgments, which read thus:

"56. This Court has had the occasion to discuss the effect of extra-judicial confessions in a number of decisions. In Balwinder Singh v. State of Punjabs this Court stated the principle that:

- ‘10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where*

an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance’.

57. *In Pakkirisamy v. State of T.N., the Court held that:*

‘8. ... It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession’.

58. *Again, in Kavita v. State of T.N., the Court stated the dictum that:*

‘4. There is no doubt that convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made’.

59. *While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in State of Rajasthan v. Raja Rams stated the principle that:*

‘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 Court further expressed the view that:

‘19. ... 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 of attributing an untruthful statement to the accused.....’

60. *In Aloke Nath Dutta v. State of W.B., the Court, while holding that reliance on extra-judicial confession by the lower courts in absence of other corroborating material, was unjustified, observed:*

‘87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.

89. A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is

a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof”.

61. *Accepting the admissibility of the extra-judicial confession, the Court in Sansar Chand v. State of Rajasthan held that:*

‘29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material.

30. In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872’.

62. *Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in Rameshbhai Chandubhai Rathod v. State of Gujarat held as under:*

‘53. It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless, the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true’.

63. *Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it”.*

10. The evidence of PW – 4 [Bajirao Limbaji Pawar] show that he was residing in the hutment area at village Pokhari. In the morning of 30/04/2013, the Appellant had come to his house and gave a call, to which, he and his wife got up. The Appellant told him that he had committed murder of his wife and we should help him for burying the dead body of his wife. This witness deposed that they did not help and thereafter, the Appellant left. He further deposed that in the morning, he came to know

that the Appellant murdered his wife. His evidence show that his statement was recorded by the Police as per his say.

11. It is strange that when the Appellant had disclosed him that he killed his wife and sought his help for burying the dead body, this witness kept mum. This cannot be said to be a natural conduct. Further, his cross-examination show that he stated the date of incident in his examination-in-chief as instructed by the Police. Thus, evidence of this PW – 4 is required to be seen with doubt.

12. The evidence of PW-6 – [Sageeta Bhagwan Jadhav] show that the Appellant was her neighbour and deceased – Renuka was the Appellant's wife. The incident took place on 29/04/2013. According to her, when she and her husband were sleeping in the courtyard, they heard the noise of shouting of deceased from her house around 9:00 to 10:00 and they got frightened and went inside their house. According to her, the noise of shouting was coming up to half an hour and thereafter, they went to sleep. In the next day morning at about 6:00 to 7:00 am, when she was in the courtyard, the Appellant told her that he killed his wife and buried in the lake. The Appellant threatened her that if she disclosed about the same to anybody then he will tell her name. Her evidence show that her statement was recorded by the Police as per her say.

13. When PW – 6 was the neighbour of the Appellant and she heard the noise of the deceased, which was for half an hour, it is strange that they (PW - 6 and her husband) did not raise alarm or went to rescue her being the neighbourer. Her cross-examination show that there was quarrel between her and the Appellant prior to the incident and there were cross complaints against each other. This show that there were inimical terms between this witness and the Appellant. Thus, her evidence is required to be seen with doubt.

14. The evidence of PW – 8, namely, Prafulla Hanmantrao Ankushkar, who was the Investigating Officer, show that the population of village Pokhari was near about 250 to 300 and there were two houses adjacent to the house of Appellant. This establishes that the house of Appellant was not in a secluded place. It is really strange that when the shouting of the deceased lasted for about half an hour, no one from the locality. came forward and tried to stop the incident and report the matter to the Police. Thus the evidence of these two witnesses i.e. PW – 4 and PW – 5 lacks credibility and hence discarded.

15. The other evidence is that of the informant who is examined as PW – 1 [Sunil Motilal Harne]. His evidence show that on 30/04/2013, he was at Aurangabad and the Deputy Sarpanch and Police Patil of his village informed him that the Appellant had killed his wife on 29/04/2013 in the night in his house and buried her body near the percolation tank. He reached to the village and informed the Police. Thereafter, the Police arrested the Appellant and recovered her body which was buried and lodged the report in the evening between 6:00 pm to 6:30 pm, which was at Exhibit – 12. His evidence go to show that before registration of the crime, the Appellant came to be apprehended. His evidence go to show that the Police called the villagers with the hoe for digging and the Appellant had removed the dead body. However, his cross-examination show that the Police had come to the spot before he reached there and the work of removing the soil or digging was going on for 30 to 45 minutes.

16. The evidence of PW - 8 [Prafulla Hanmantrao Ankushkar] - Investigating Officer show that on receiving the phone call of PW – 1 that the Appellant had murdered his wife, he made the entry in the station diary and went to the village, collected the information from the villagers and apprehended the Appellant. Though PW – 8 [Prafulla Hanmantrao

Ankushkar] / Investigating Officer deposed that after apprehending, the Appellant told him that he assaulted his wife due to domestic quarrel and buried her in small water pond and he visited the spot and noticed that there was sign of burying the dead body. However, this evidence do not establish that the dead body was discovered at the instance of the Appellant pursuant to Section 27 of the Indian Evidence Act, 1872 [For short 'the Act'] to make it relevant.

17. There is evidence of PW – 2, namely, Bhausahab Appasaheb Dandge to show that on 30/04/2013, he was asked by the Police to act as the panch at the house of the Appellant, which was comprising of two rooms having tin roof and cement flooring. His evidence show that the utensils were scattered in the room and the quilt and blanket were lying in the room. Though he deposed in his examination-in-chief that there were blood stains on the quilt and blanket and found that the blood was spilled and was rubbed by quilt in that room, in his cross-examination, he deposed that since it was red in colour, he felt that it was blood. He goes to depose in the cross-examination that the quilt and blanket were fully smeared with blood. It has come in his evidence that during menstruation, the blood of woman may fall on the quilt. His evidence show that there was no pool of blood. Admittedly, there are no reports of chemical analysers brought in evidence by the prosecution, though the evidence of PW- 8 [Prafulla Hanmantrao Ankushkar] show that he referred the seized muddemal for chemical analysis.

18. The above evidence of panch witness show that when he went there, the house was open and the Police were making inquiry as to who had opened the house and no person was knowing as to who opened the house. It has come in his evidence that it was not revealed as to who opened the house. His evidence go to show that the articles were not sealed by wax. His evidence also go to show that the spot of incident was Vasti [locality]

and there were houses adjoining to the house. The evidence of this panch witness show that there were pieces of green colour bangles beneath the quilt.

19. From the above evidence of the spot panch, it is clear that the place where the Police had gone and conducted the spot panchnama was a small dwelling comprising of two rooms which was open. Minute scrutiny of the evidence on record show that it is not established by the prosecution that the spot of incident was the house of the Appellant. Though the PW – 2 [Bhausahab Appasaheb Dandge] the spot panch in his evidence deposed that the house of the Appellant was facing towards east and there was a road towards western side of his house and his house comprised of two rooms having tin roof and cement flooring, in his cross-examination, it has come that he had no opportunity to go to that house anytime before and he could not say what was the house number. His evidence further show that the said house was at far distance from his house. Thus, there is no convincing and conclusive evidence to establish that the said spot was the place owned by the Appellant and he was lastly seen with the deceased at that place.

20. PW – 3 [Appasaheb Damodhar Harne] was examined by the prosecution to show that two pipes and clothes were seized at the instance of the Appellant pursuant to the provisions of Section 27 of the Act. His evidence show that he did not support the prosecution. Though he was cross-examined by the prosecution, nothing material has come to establish the discovery of the pipes and the clothes at the instance of the Appellant whereas his evidence show that the said articles were seized by the Police from the open space.

21. In his evidence, PW – 8 [Prafulla Hanmantrao Ankushkar] - Investigating Officer deposed that two iron rods and clothes i.e. one shirt and pant were seized pursuant to the memorandum prepared on the

statement of the Appellant. His evidence show that the said articles were seized from open space of Gram Panchayat. Even if the said discovery and seizure are accepted, there is no evidence to connect them with the crime and therefore, it will not be relevant as per Section 27 of the Act.

22. There is evidence of PW – 7, namely, Salman Shah Shakeel Shah which show that on 30/04/2013, he acted as the panch for seizure of one red colour saree, black colour blouse and sky colour petty coat under the panchnama at Exhibit – 77. The said seizure takes the case of prosecution nowhere as according to this witness, the said clothes were shown to him by the Police and he did not know what was written in the panchnama.

23. Evaluation of the evidence available on record show that, it is not established that it was the Appellant who killed his wife and buried her in the village. The evidence available on record is neither trustworthy nor concrete. The evidence of each witness if taken individually and even collectively, do not establish the Charge against the Appellant. The burden as contemplated under Section 106 of the Act will not shift on the Appellant for the reason that the prosecution has completely failed to discharge its initial burden to show the involvement of the Appellant in the crime. There is no iota of evidence to prove that the Appellant was lastly seen with the deceased. The place, which according to the prosecution is the place of crime where the spot panchnama is conducted was the house which was found open when the panch witness and the Police had reached there. It is not proved by the prosecution that the said place belong to the Appellant. Even if it is presumed that the said place was the house of the Appellant, it is highly improbable that despite shouting of the deceased in the house which was located in the populated area surrounded by the other houses, no one informed the Police immediately nor went to the said spot. It appears highly improbable that after committing the murder the Appellant took the dead body and during the night buried her in such a depth, which required

several persons to dig and remove for 30 to 45 minutes and that to at the place which was near the percolation tank in the village. The Appellant was arrested prior to registration of crime. This clearly establishes that the Appellant was arrested on mere Suspicion. At the most, the prosecution evidence raises Suspicion against the Appellant, however, it is settled position under the law that Suspicion however strong cannot take the place of proof.

24. In the backdrop of the above, we proceed to pass the following order:

ORDER

(I) The Criminal Appeal is allowed.

(II) The Judgment and Order dated 23/01/2019 passed by the learned Additional Sessions Judge, Aurangabad, in Sessions Case No.263/2013 convicting and sentencing the Appellant for the offences punishable under Sections 302 and 201 of IPC, is quashed and set aside.

(III) The Appellant stands acquitted for the offences punishable under Sections 302 and 201 of IPC.

(IV) The Appellant be released forthwith, if not required in any other offence.

(V) The Record and Proceedings be sent back to the learned Trial Court.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)