

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.801 OF 2014

Ajay Peter Topannu

Occupation : Labour, Age : 26 Years,

Residing at : 1-D, Area Aamby Valley City,

Ambavane, Taluka : Mulshi, District : Pune

(Originally from Marchamishan, Thana Rania, ...Appellant
Post : Marcha, District : Khunti, Jharkhand) (Ori.Accused)

Versus

The State of Maharashtra

Through : Paud Police Station,

Pune District.

...Respondent

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**WITH
CRIMINAL APPEAL NO.150 OF 2023
WITH
INTERIM APPLICATION NO.5135 OF 2024
[FOR EARLY HEARING THROUGH JAIL]**

Mangara Bhikari Barla

Occupation : Labour, Age : 37 Years,

Residing at : 1-D, Area Ambi Valley City,

Ambavane, Taluka : Mulshi, District : Pune

(Originally from Bakaspur, Thana Karra,
Taluka : Khunti, District : Ranchi, Jharkhand) ...Appellant

Versus

The State of Maharashtra

Through : Paud Police Station,

Pune District.

...Respondent
(Ori.Accused No.2)

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Mr.Satyavrat Joshi a/w Ms.Shivani Kondekar, Mr.Samay Pawar,
Mr.Yash Fadtare, Mr.Ishan Paradkar, Mr.Ashish Kachole,

Satish Sangar

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Ms.Sakshi Mane, Ms.Reena Prajapati – Advocates for Appellant in Criminal Appeal No.801 of 2014.

Mr.Prosper D’Souza (Appointed Advocate through Legal Aid) for Appellant in Criminal Appeal No.150 of 2023 and Interim Application No.5135 of 2024.

Mr.Arfan Sait – APP on behalf of Respondent-State in both the Criminal Appeals and in Interim Application.

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**CORAM : SARANG V. KOTWAL &
S.M. MODAK, JJ.**

DATE : 9th JANUARY 2025

ORAL JUDGMENT : (PER : S. M. MODAK, J.)

1. Both these Appeals are disposed of by this common order, because they are arising out of the same impugned judgment and order.

2. The Appellant–Ajay Peter Topannu in Criminal Appeal No.801 of 2014, was the original accused No.1 and the Appellant in Criminal Appeal No.150 of 2023–Mangara Bhikari Barla was the original accused No.2. Both of them were tried in Sessions Case No.633 of 2012 by the Additional Sessions Judge – Pune. The learned Judge vide his judgment and order dated 23rd April 2014, convicted both of them for commission of offence punishable under Section 302 read with 34 of the Indian Penal Code, 1860 (“**IPC**”) and, both the Appellants were

sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/- (Rupees Five Thousand) each and in default, to suffer, rigorous imprisonment for one month, each. They were also convicted for the offence punishable under Section 201 read with 34 of IPC and both of them were sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.500/- (Rupees Five Hundred) each and, in default, to suffer, rigorous imprisonment for one month, each. They were granted set off under section 428 of the Code of Criminal Procedure, 1973 (“**Cr.P.C.**”).

3. For the sake of convenience, both the Appellants are referred to as the original accused or by their names.

4. Heard learned counsel Shri.Satyavrat Joshi for the Appellant in Criminal Appeal No.801 of 2014, learned appointed counsel Mr.Prosper D’Souza for the Appellant in Criminal Appeal No.150 of 2023 and learned APP Mr.Arfan Sait for Respondent-State in both the Appeals.

5. The prosecution case, in brief, is as follows:-

A. The accused were working as labourers in Aamby Valley city situated within the limits of village Ambavane, Taluka : Mulshi, District : Pune. One Rajkumar Sahu was also working as a labourer in the same project. It is the prosecution Satish Sangar

case, that Rajkumar used to tease the wives of the accused and therefore, the accused were annoyed with him. On 20th May 2012, at about 8.00 p.m., the accused took Rajkumar near Tata dam which was locally known as “*Mulshi dam*” and committed his murder by using an axe.

B. On the next date, one of the witnesses overheard them talking about commission of the offence and their plan to leave from that area. In the meantime, search was taken for Rajkumar who was found missing since evening of 20th May 2012. The witness, who overheard the accused, informed the others. The accused were confronted. They led the co-workers and the supervisors to the spot where the body was found in the water. The police were informed. The FIR was lodged and investigation was carried out. At the instance of accused No.2, the murder weapon i.e. the axe and his clothes were recovered. The clothes of accused No.1 were also recovered from another spot at his instance.

C. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Session. During trial, the prosecution examined 11 witnesses including the security officers, site supervisor, panchas, the persons to whom allegedly the accused had made an extra-Satish Sangar

judicial confession, the medical officer who conducted *post mortem* and the investigating officers.

D. The learned Judge believed the prosecution witnesses in respect of the incriminating circumstances against the accused. The defence of the accused was of total denial. Three circumstances which weighed with the learned Judge were, the last seen theory, the recovery and, the extra-judicial confession.

E. The FIR was lodged by PW No.2–Kailas Dhole. He has deposed, that he was serving as a security supervisor at Aamby Valley since about 10 years prior to the incident. One supervisor PW No.4–Rajesh Dube made a phone call to the security officer PW No.1–Ramdatta Yadav. At that time, PW Nos.1 and 2 were told that Rajkumar Sahu was murdered. Therefore, both of them i.e. PW No.1 and PW No.2 went to the labour camp. They met PW No.5–Dinesh Benjamin who informed them about Rajkumar's murder.

F. PW No.2–Kailas has further deposed, that all of them, then, went to the room of the accused Nos.1 and 2 as Dinesh Benjamin has raised suspicion against them. PW Nos.1 and 2 made inquiries with the accused about Rajkumar. The accused No.1–Ajay tried to run away but he was apprehended.

On further enquiry, the accused No.1 told them, that he himself and the accused No.2 had committed Rajkumar's murder in the night. He further said that, Rajkumar used to tease their wives and therefore, they committed his murder. Then, PW No.2 and others asked them about the dead body. The accused informed them that the dead body was thrown in the water canal of Tata dam. The accused took them to that place. It was about thousand feet on southern site of One-D Labour Camp. The dead body was found in the water. There were signs that the dead body was dragged for a distance of 500-600 feet.

G. PW No.2 and others, then made a phone call to the senior security manager, PW No.7-Colonel Sumant Bhattacharya. He came there within 15 minutes. He again made enquiry with the accused. Again, they gave extra-judicial confession about the incident. According to them, they had committed his murder at about 8.00 p.m., on 20th May 2012. PW No.7, then asked PW No.2 to lodge FIR. Accordingly, PW No.2-Kailas Dhole lodged the FIR with Paud Police Station. It is brought on record at Exhibit-20. PW No.2 showed the spot of offence to the police. The dead body was taken out from the canal. There was neck injury on the body.

H. In the cross-examination, he deposed, that at the
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time of incident, about 25 to 30 labourers with their family members were residing in that Labour Camp. The total area of Aamby Valley is of 14000 acres, there were 15 security supervisors and 350 to 400 security guards deployed.

I. PW No.1–Ramdatta Yadav was the security officer as mentioned by PW No.2–Kailas. He has described the phone call made by Ramdatta Yadav referred to by the PW No.2. According to PW No.1, that phone call was made at about 7.10 to 7.15 a.m., regarding the murder of Rajkumar. PW No.5–Dinesh informed him, that both the accused had committed the murder. PW No.1 and others tried to catch the accused but they tried to run away but they were apprehended.

J. He has further deposed, that both the accused made an extra-judicial confession, that they had committed the murder of Rajkumar at about 8.00 p.m., on 20th May 2012. PW No.1 told him to show the place of offence. Then, the body was shown. PW No.7–Colonel Sumant Bhattacharya was informed. He also made enquiries. He identified both the accused before the Court. However, he could not tell, out of them, who was the accused No.1 and who was the accused No.2.

In the cross-examination, he deposed, that there were 4000 labourers working in Aamby Valley. He denied the Satish Sangar

suggestion that they apprehended the accused by entering their room. He also admitted, that PW No.5–Dinesh had only expressed a suspicion against the accused. Importantly, in the cross-examination, he has stated, that PW No.2–Kailas and Madhavendra Rai had chased the accused and apprehended them. After that, the hands of the accused were tied by a rope. He further deposed, that they had consumed liquor and they had committed his murder and they showed willingness to point out the place of incident.

K. PW No.4–Rajesh Dube was referred to by both PW No.1 and PW No.2. He has deposed, that on 21st May 2012, one Ghanshyam Chauhan called him telephonically and told him about Rajkumar's murder. PW No.4, in turn, made a phone call to PW No.1 to tell him about the incident. He has deposed that, the accused were apprehended by PW Nos.1 and 2 and then, they were taken to the control room. The accused were in tears and, they made an extra-judicial confession that as Rajkumar had teased their wives, they had killed him.

He admitted in the cross-examination, that when he had seen that both the accused were in tears in the control room, their hands were tied at their backside. He himself had served them refreshment with his own hands.

L. PW No.3–Dasa Barla was the witness on the theory of “*last seen together*”. He has deposed, that in the night of 20th May 2012, he was in his room situated at One-D Labour Camp. At about 7.00 p.m., he noticed, that both the accused along with Rajkumar Sahu were proceeding towards Tata dam. He deposed, that at that time, the accused No.1 was having an axe.

On 21st May 2012, he was called by PW No.2–Kailas and the police at Tata dam at about 2.30 p.m. They saw the dead body in the water. There was injury on the head and neck and other parts of the body. The *inquest panchnama* was prepared. This witness had signed that panchnama as a pancha. It is produced on record at Exhibit–22. He admitted, in the cross-examination, that at the time of inquest panchnama, he did not inform the police and others, that he had seen both the accused and Rajkumar on 20th May 2012 at 7.00 p.m., and that the accused No.1 was armed with an axe. He admitted, that all the labourers used to be under fear of the supervisors.

M. PW No.5–Dinesh Benjamin was another witness on the theory of “*last seen together*”. He has deposed, that on 20th May 2012, at about 7.00 p.m., he was standing in front of his room. He had seen both the accused and Rajkumar going

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towards Tata dam. On the next day morning at about 6.00 a.m., he noticed, both the accused were chitchatting with each other. He listened to their talk and he heard, that the accused were saying that they had killed Rajkumar and that they wanted to leave Pune. This statement which the accused made was told by him to one Ghanshyam Chauhan. After that, PW No.1 and PW No.2 had come to One-D Labour Camp. PW No.5, then informed both these witnesses about what he had heard from the accused. After that, PW No.1 and PW No.2 made enquiries with the accused and then, the accused led them to Tata dam where the witnesses noticed the dead body.

In the cross-examination, he admitted, that his police statement did not mention the fact, that he had informed PW No.1 and PW No.2 about the statement which he had overheard from the accused mentioning their guilt.

N. PW No.6–Dattatraya Mate was a panch for spot panchnama which is produced at Exhibit–29. The spot was shown by PW No.1. PW No.7–Colonel Sumant Bhattacharya has supported the narration of PW No.1 and PW No.2 and he added, that he had enquired with both of them about the incident. Initially, they did not reply but later on, they confessed, that they had committed Rajkumar's murder

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because, he used to tease their wives. He, then informed Paud Police Station and deputed PW No.2–Kailas to give the FIR. The police came at the spot at 11.30 a.m. The dead body was removed at 1.00 p.m.

In the cross-examination, he stated that both the accused simultaneously made a statement accepting their guilt.

O. PW No.8–Shivraj Ramrao Mule was the medical officer who had conducted the *post mortem* examination. There were 7 CLWs on the dead body and the cause of death was mentioned as “*hypovolumic shock due to massive hemorrhage due to cutting of neck vessels and multiple fracture of skull bones*”.

He further deposed, that the death might have taken place within 24 hours from the time when the autopsy was conducted. The record shows that the *post mortem* examination was conducted between 6.00 p.m., to 7.00 p.m. That means, the death according to him, could have occurred at any time between 7.00 p.m., on 20th May 2012 to 7.00 p.m., on 21st May 2012.

P. PW No.9–Ghanshyam Chauhan was told by PW No.5 that PW No.5 had overheard the accused talking about committing murder of Rajkumar. He then made a phone call to Satish Sangar

PW No.4–Rajesh Dube and informed about the said act.

Q. PW No.10–Ganesh Kadam was a panch and in his presence, the axe and clothes were recovered at the instance of the accused No.2 on 25th May 2012 and clothes were recovered at the instance of accused No.1 on 25th May 2012. The axe and the clothes of the accused No.2 were recovered at his instance from the backside of the Labour Camp. He admitted, that the said spot from where the recovery is effected was an open place and was accessible to all. The clothes of the accused No.1 were recovered at his instance from a heap of stones.

R. PW No.11–Narayan Nyahalde was the investigating officer. He had carried out the investigation after the FIR was lodged. He has deposed, about the investigation, recording of statements, effecting recovery and sending the articles to the chemical analyzer.

S. The chemical analyzer's reports were produced at Exhibit-49 onwards. There were stains of human blood on the axe and the clothes recovered from the accused. Another chemical analyzer's report show that the earth collected from the spot showed the same texture and characteristics on the axe and clothes of the accused.

This, in short, is the evidence led by the
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prosecution. As mentioned earlier, the defence of the accused was of total denial.

6. During arguments, learned Advocate Shri.Joshi made the following submissions:-

- a. The evidence of '*last seen*' from the mouth of PW No.3 – Dasa and PW No.5 – Dinesh suffers from inherent lacunae. There are also improvements in their testimonies.
- b. The '*extra-judicial confession*' given in the labour camp and at the spot, as deposed by the relevant witnesses, cannot be said to be voluntary, considering the circumstance under which, it was alleged to be given.
- c. The '*extra-judicial confession*' alleged to be given in the control room. It certainly was forced because the witness PW No.4–Rajesh has deposed, that their hands were tied.
- d. The recovery of clothes and weapon is from the place accessible to the public and it cannot be said to be within their special knowledge.
- e. The CA report does not help the prosecution case because the result of analysis is inconclusive.

7. To buttress his submission, he relied upon the following two judgments:-

(i) ***Ramreddy Rajesh Khanna Reddy and Another V/s.***

State of A.P.¹ and more specifically, the observations in para

¹ (2006) 10 Supreme Court Cases 172

Nos.26 and 27. It deals with, how the evidence of '*last seen theory*' has to be appreciated. It deals with the situation where there is a time gap in between the point of time ; when the accused and deceased were last seen alive and the deceased was found dead.

(ii) ***Sahadevan and Another V/s. State of Tamil Nadu***¹

and more specifically, the principles reproduced in Para No.16 about the manner of appreciation of extra-judicial confession.

8. Learned Advocate Mr.D'Souza for the Accused No.2 –Mangara also argued on the same lines and according to him, the trial Court has not appreciated the evidence on the basis of well established principles of '*appreciation of evidence*'. He prayed for setting aside the conviction. He submitted, that there is no evidence to establish the motive that the deceased used to tease the wives of the accused.

9. Learned APP, with full force, tried to support the judgment and according to him, the persons to whom, the extra-judicial confession was given, cannot be said to be '*a person in authority*' and as such, the bar under Section 24 of the Indian Evidence Act, 1872 will not come into picture. To support his submission, he relied upon the observations in case

¹ (2012) 6 Supreme Court Cases 403
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of *Santokhi Beldar V/s. King-Emperor*¹. In that case, the Tahsildar, to whom a confession was given, was not considered as ‘a person in authority’. The Tahsildar can be having some influence in the village, but he was not having interest in the prosecution of the accused and hence, the bar under Section 24 of the Evidence Act was held not applicable. Learned APP emphasised on the above said circumstance, and he also invited our attention to an attempt made by both these Appellants to flee away, when they were inquired by PW No.1 – Ramdatta and PW No.2–Kailas and others at the Labour Camp.

10. The defence of the Appellants was of denial. In these Appeals, we are required to ascertain, whether the prosecution evidence was sufficient to arrive at the conclusion about guilt of both the Appellants and whether, the trial Court was justified in convicting them.

Reasons

11. There are following main circumstances against the Appellants:-

Last seen together theory

In that connection, the prosecution has examined PW No.3–Dasa Barla and PW No.5–Dinesh Benjamin. Out of

¹ Volume : XII, Patna Series : 241.
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whom, Dasa Barla was panch for inquest panchnama which was conducted on 20th May 2012. At that time, he had not told the police officers or anybody else about the theory that he had seen both the accused together with the deceased at about 7.00 p.m., on 20th May 2012. His statement was recorded on 22nd May 2012 and therefore, for the first time, he mentioned about the “*last seen theory*” after two days. Till then, he had not told anybody about this theory. Therefore, he does not appear to be a reliable witness. The other witness PW No.5–Dinesh Benjamin is also not a reliable witness. It was difficult to accept that he overheard the accused talking with each other about commission of murder. It is difficult to believe, that they might have discussed this issue when he was around within an audible distance. Apart from that, the “*last seen theory*” is not significant because of the time gap between the time when the accused and deceased were seen together and when the dead body was found or when the death had occurred was quite big. The medical officer has deposed, that the death could have occurred within 24 hours before 7.00 p.m., on 21st May 2012. Therefore, the death could have taken place any time between 7.00 p.m., on 20th May 2012 to 7.00 p.m., on 21st May 2012, that is a long gap as rightly submitted by learned counsel for Satish Sangar

the Appellants. In the case of ***Ramreddy Rajesh Khanna Reddy and Another V/s. State of A.P.***¹, the Hon'ble Supreme Court has observed in paragraph No.27 as follows:-

“27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration”.

Therefore, we do not accept, that the alleged theory of “*last seen together*” is an ‘*incriminating piece of circumstance*’ against the accused in this case.

The evidence regarding extra-judicial confession

12. In this context, there is evidence of PW No.1–Ramdatta Yadav and PW No.7–Colonel Sumant Bhattacharya in particular. The question is, whether that extra judicial confession was made voluntarily. As discussed earlier, the witnesses have deposed, that both the accused were found in the control room and their hands were tied from behind. Therefore, they were definitely under control and were overpowered by the supervisors and other security officers.

¹ (2006) 10 Supreme Court Cases 172
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Hence, it is difficult to believe, that their confession was voluntary. The extra-judicial confession in any case, is a weak piece of evidence and it needs corroboration. It can be acted upon only if the Court is satisfied, that it was voluntary and truthful. In that connection, the principles laid down by the Hon'ble Supreme Court in ***Sahadevan and Another V/s. State of Tamil Nadu***¹ case are important which are as follows:-

“The principles

16. Upon a proper analysis of the abovereferred judgments of this Court, *it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:*

- (i) The extra-judicial confession is a weak evidence by itself. *It has to be examined by the court with greater care and caution.*
- (ii) It should be made ***voluntarily*** and should be ***truthful***.
- (iii) It should ***inspire confidence***.
- (iv) *An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by*

¹ (2012) 6 Supreme Court Cases 403
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other prosecution evidence.

- (v) ***For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.***
- (vi) Such statement *essentially has to be proved like any other fact and in accordance with law.*”

(Emphasis laid)

Applying these principles, it is quite clear, that in this case, the voluntariness of the alleged extra-judicial confession appears to be doubtful and therefore, it is not possible to rely on this extra-judicial confession to reach a finding of guilt. The allegations, that the accused had shown the place where the dead body was found, is also not an incriminating circumstance in this case because it was part of the same process of making confession which had led the witnesses to the spot where the accused had allegedly committed murder and from that spot, the dead body was seen.

13. The evidence regarding PW No.5–Dinesh Benjamin hearing the accused discussing amongst themselves about commission of murder and about leaving Pune as mentioned earlier, does not inspire confidence, as there was no reason for the accused to discuss this topic within an audible distance

where PW No.5 was present.

14. Other remaining circumstances is about recovery. However, from the evidence, it can be seen that the panch has accepted that the place from where the axe and clothes of the accused No.2 were recovered at his instance, was open and was accessible to all. Even, the clothes of accused No.1 were recovered at his instance from a heap of stones. It is not mentioned anywhere that the clothes were concealed. Therefore, the finding of human blood on these articles, does not help the prosecution case.

15. Though, the prosecution is claiming, that the murder was committed because the deceased was teasing the wives of the accused, no such evidence is brought on record.

16. Thus, from this discussion, it is quite clear, that the prosecution has failed to prove every individual circumstance beyond reasonable doubt against the accused and the prosecution has failed to form a complete chain of circumstances proving guilt of the accused.

17. With the result, the benefit of doubt must be given to the accused and hence, they will have to be acquitted. Hence, following order:-

O R D E R

- (i) Both the Appeals are allowed.
 - (ii) The conviction and sentence recorded by the Additional Sessions Judge – Pune dated 23rd April 2014 in Sessions Case No.633 of 2012 are set aside.
 - (iii) The Appellants be released forthwith, if not required in any other case.
 - (iv) Fine, if deposited, be returned to the Appellants.
 - (v) Both the Appellants are directed to furnish a bond for amount of Rs.30,000/- (Rupees Thirty Thousand) each with one or more sureties in the like amount under Section 437-A of Cr.PC., before their release from jail.
18. Both the Appeals are disposed of.
19. Interim Application also stands disposed of.

(S.M.MODAK, J.)

(SARANG V. KOTWAL, J.)