



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Appeal No. 10 of 2021

Raju @ Macchar Soma Naitam
Age 36 years, R/o Shelu Shendursani,
Taluka Arni, District Yavatmal.

... Appellant

- Versus -

State of Maharashtra,
Through Police Station Officer Arni,
District Yavatmal.

... Respondent

Mr. S. P. Deshpande, Advocate (Appointed) for the appellant
Mr. N. R. Rode, APP for the State/respondent

**CORAM : ANIL L. PANSARE AND
RAJ. D. WAKODE, JJ.**

Date of reserving judgment : 04-11-2025
Date of pronouncing judgment : 11-11-2025

JUDGMENT (Per : ANIL L. PANSARE, J.)

The appellant takes exception to the judgment and order dated 22-9-2020 passed by learned Additional Sessions Judge, Darwha in Sessions Trial No. 23/2018 whereby the appellant is convicted for the offence punishable under Section 302 of the Indian Penal Code (IPC) and sentenced to undergo imprisonment for life and to pay fine of Rs. 2,000/-. As such, he was tried for the offence punishable under

Sections 302 and 201 of the IPC, however, he has been acquitted for the offence punishable under Section 201 of the IPC.

2. Briefly stated, the allegations against the appellant were that in the intervening night of 2-7-2018 and 3-7-2018 at about 0.00 Hours, he committed murder of one Rajendra Ambadas Mhaske and thereafter threw the dead body with an intention to screen himself from punishment.

3. The theory of destroying evidence has been disbelieved by the trial Court. The other part of prosecution theory viz. he committed murder of Rajendra was, however, believed on the basis of evidence led by the prosecution. The appellant is aggrieved by the said finding and, therefore, the present appeal.

4. We have heard Mr. S. P. Deshpande, learned counsel for the appellant and Mr. N. R. Rode, learned Additional Public Prosecutor (APP) for the State/respondent. We have gone through the impugned judgment, evidence, the documents etc. We will refer to the same to the extent necessary to decide the point/s that arise for our consideration.

5. There is no dispute that Rajendra suffered homicidal death. The dispute is as regards the involvement of appellant in the crime. Thus, the only point that arises for consideration is whether the prosecution has established guilt of appellant. The answer is in the negative for the reasons to follow.

6. Admittedly, there is no eye witness to the crime. The case of the prosecution is based on the extrajudicial confession given by the appellant to his friend Rupesh (P.W. 2). His chief-examination read as under.

“1. I was knowing deceased Rajendra and accused. Incident took place before 11 months. When I was at Arni, Subhash Pawar told me that Rajendra was laying in his house. Then I went to my village at 6.00 p.m. and saw that Rajendra was dead on cot with injury on his chest, neck and head. On next morning I received phone call of accused Raju. He said that he wanted to tell some thing lateron. Then on next day police came to my house. I told to police that I received above phone call of accused Raju. Then on say of police I made phone call to accused by speaker on and asked the accused Raju as to what he wanted to tell. Then accused Raju told me on phone call that he committed murder. He also told that the incident was occurred on dispute of dinner. He also told that he committed murder with the help of axe.

*2. Police took me to Court for recording statement. Magistrate also recorded my statement. It bears my signature. Its contents are correct. It is at **Exh. 12**. Accused present in Court is same.”*

Thus, P.W. 2 has not witnessed the incident. He received phone call from appellant saying that he wanted to tell him something. On next day, police arrived at his house. The reason why police visited his house is not known to anybody. It is further not known as to why did P.W. 2 suspect involvement of appellant to inform police that appellant had called him. Thereafter P.W. 2 made a phone call to appellant on say of police, upon which the appellant informed him that he committed murder because of dispute of dinner.

7. In the cross-examination, the defence has brought on record that Rajendra was addicted to liquor and his relations with villagers were not cordial. His relations with his relatives were also not cordial. He ill-treated his wife mentally and physically. She left him. The evidence of other witnesses including father of appellant indicate that Rajendra was residing alone in the house, in the sense, his dead body was found in his house and it is nobody's case that along with Rajendra, anybody was residing with him.

8. The argument of appellant is that in such circumstances, the prosecution was under obligation to prove that except for appellant, none else was responsible for the crime. We find substance in the aforesaid submission. If the relations of appellant were not cordial with the villagers and even with his family members, the possibility of

involvement of third person should have been ruled out by the prosecution.

9. In such cases, motive will play significant role. The motive behind crime is said to be dispute that occurred because of dinner. This theory is unacceptable without other details. The prosecution should have proved as to where did appellant and Rajendra take dinner, why had there occurred quarrel, where from the appellant obtained axe to assault Rajendra and so on. Neither is there evidence on this point nor are these details disclosed by appellant in his alleged confession made before P.W. 2. Such evidence, which does not give these details, is not sufficient to bring home the guilt of appellant. More so, because P.W. 2 and Investigating Officer are both silent as to why should Investigating Officer visit house of P.W. 2.

10. Learned counsel for the appellant has relied upon the judgment of the Supreme Court in the case of ***Gopal Sah Vs. State of Bihar [(2008) 17 SCC 128]*** to argue that extrajudicial confession is a weak piece of evidence and the courts are reluctant, in the absence of chain of cogent circumstances, to rely on this evidence for the purpose of recording a conviction.

11. As such, it would depend on facts of each case as to what weightage should be given to the extrajudicial confession in a particular case, however, where a conviction is to be based on extrajudicial confession, the Court will have to record satisfaction that the confession made would satisfy all the requirements of law and such confession is supported by corroborative piece of evidence. In the present case, for the reasons which we have noted above, we do not find extrajudicial confession given by P.W. 2 to be sufficient to blame appellant for the crime which attracts life imprisonment. Mere statement by the appellant that he has murdered Rajendra on account of dispute of dinner will not serve the purpose.

12. Learned Additional Public Prosecutor (APP) argued that there is corroborative piece of evidence in the form of recovery of weapon i.e. axe used in the crime. The same is recovered at the instance of appellant from his house. The weapon was kept behind the box in the kitchen. According to learned APP, the weapon contained blood stains. The Chemical Analyser's report indicates that it is a human blood. Thus, according to him, extrajudicial confession coupled with recovery of weapon is sufficient to prove involvement of appellant.

13. The argument has been rightly countered by learned counsel for the appellant. He submits that there is absolutely no

evidence of appellant using this weapon to kill Rajendra. None of the witnesses have stated that Rajendra was assaulted by axe. In the alleged confession also, there is no reference to use of weapon. In the circumstances, the recovery of weapon, even if is to be accepted to be true, will be not sufficient to prove that the said weapon was used in the crime and to connect appellant with the crime.

14. Apart from above, there is no other evidence that would prove the guilt of appellant.

15. P.W. 1 is father of deceased. He got to know about the incident from knowledge and, therefore, he went to the house of Rajendra to find that he was lying on the cot with injury on his chest. Similar is the evidence of P.W. 3, who is elder brother of Rajendra. P.W. 4 and P.W. 5 are the persons, who had acquaintance with the appellant and deceased. Their evidence on incident is also hearsay. The only addition is that they saw injuries on the chest, throat and head. P.W. 6 is a photographer, who has taken photograph of dead body. P.W. 7 is a panch witness to inquest panchanama, seizure of clothes, spot panchanama etc. P.W. 8 is panch witness to recovery of weapon. P.W. 9 is Investigating Officer, who does not speak as to why did he go to the house of P.W. 2 nor does he depose about phone call made by P.W. 2. He has deposed about what transpired in interrogation with the appellant

where he disclosed about use of weapon. This evidence is hit by Section 25 of Evidence Act and thus inadmissible. P.W. 10 is the police officer, who has recorded FIR. He also does not speak of visit to P.W. 2's house. P.W. 11 is Medical Officer, who has conducted postmortem. Since there is no dispute about homicidal death, his evidence does not require detail analysis.

16. The trial Court has examined one Sunil Gawande as Court witness finding that his statement was recorded by police, but not examined by the prosecution. He deposed that P.W. 2 had made a phone call and informed him that appellant will come to him (Court witness) and that he should provide food to him. Accordingly, the witness gave food to appellant. Thereafter P.W. 2 and two persons came to his shop and took appellant with them.

17. As such, his evidence leads nowhere, however, the trial Court has taken aid of his testimony to infer that P.W. 2 helped him and, therefore, the confession given by him to P.W. 2 is voluntary. In our view, the trial Court made an apparent error in appreciating evidence, firstly, because P.W. 2 has not deposed about these facts in his evidence. It is not known why P.W. 2 instructed this witness to provide food to appellant. It is further not known how did P.W. 2 and other two persons

came to his shop and where and why did they take accused with them. Thus, the evidence is of no use.

18. Further, the prosecution failed to justify the allegation that the appellant had destroyed the evidence by throwing dead body in order to screen him of punishment. The place where body was thrown is not disclosed. Further, none of the witnesses have deposed that the dead body was thrown at any place. In fact, the evidence is otherwise. The dead body was found in the house of deceased. Learned APP failed to show, on what basis, the appellant was chargesheeted under Section 201 of the IPC. This creates further doubt in prosecution's theory.

19. Put altogether, the evidence collected by prosecution is extremely weak, leading to no conclusion. The prosecution therefore, failed to establish involvement of appellant with the crime. The appreciation of evidence is not in consonance with the Evidence Act. The trial Court has straight away relied upon extrajudicial confession without analyzing the necessary requirements, particularly, use of weapon in the crime. The trial Court believed motive behind crime to be dinner which in itself does not appeal to the common sense, particularly when the relations of deceased with the villagers, relatives and his wife were strained. The prosecution, therefore, should have led

evidence ruling out possibility of involvement of third person in the crime.

20. In any case, there is no evidence beyond reasonable doubt against the appellant to show his involvement in the crime. That being so, the judgment of trial Court is liable to be set aside.

21. The appeal is accordingly allowed. The judgment and order dated 22-9-2020 passed by learned Additional Sessions Judge, Darwha in Sessions Trial No. 23/2018 is quashed and set aside. Appellant Raju @ Macchar Soma Naitam is acquitted for offence punishable under Section 302 of the IPC. He shall be released forthwith, if not required in any other case.

22. The appeal stands disposed of in above terms.

23. Fees of the counsel appointed for the appellant shall be quantified and paid as per the rules.

(RAJ D. WAKODE, J.)

(Anil L. Pansare, J.)