
(2018) 11 CHH CK 0032

In the Chhattisgarh High Court

Case No : Criminal Revision No. 854 of 2017, Criminal Revision No.224 of 2018

Bhupendra Singh Thakur, S/o Shri D.S. Thakur

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 27-11-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 409, 420, 467, 468, 471

Citation : (2018) 11 CHH CK 0032

Hon'ble Judges : Arvind Singh Chandel, J

Bench : Single Bench

Advocate : Goutam Khetrapal, Sangharsh Pandey

Final Decision : Allowed

Judgement

1. Since both the revisions arise out of a common judgment, they are disposed of together by this common order.
2. The present revisions arise out of the judgment dated 1.9.2017 passed by the Sessions Judge, South Bastar Dantewada in Criminal Appeal No.14 of 2015.
3. Facts, in brief, are that in Claim Case No.119 of 2005, the Additional Motor Accidents Claims Tribunal, Dantewada (henceforth 'the Tribunal') directed to deposit an amount of Rs.2,13,361/- in the name of Claimant Smt. Madkami Bodo (PW3) in a Bank in a fixed deposit. Claimant Smt. Madkami Bodo (PW3) filed an application before the Tribunal for payment of an amount of Rs.15,000/- prior to the date of maturity of the said fixed deposit. The application was allowed by the Tribunal and the Tribunal also issued a memo on 8.5.2008 for release of the said amount of Rs.15,000/- in favour of Claimant Smt. Madkami Bodo. Later on, it was found that by obtaining forged signature of the Presiding Officer of the Tribunal and putting forged seal of the Tribunal and on the basis of forged memo dated 8.5.2008, in place of Rs.15,000/-, the full amount of Rs.2,13,361/- had been withdrawn. At the relevant time, accused Bhupendra Singh Thakur, who is Applicant in Criminal Revision No.854 of 2017 and Respondent No.1 in Criminal

Revision No.224 of 2018, was posted in the Court of District and Sessions Judge as an Execution Clerk and Deposition Writer. At that time, accused Mohd. Ashique Siddique, who is Respondent No.2 in Criminal Revision No.224 of 2018, was engaged with his Senior Advocate Arjun Kunjam. On 2.8.2008, these facts came to the knowledge of the employees of the District Court, namely, Rajendra Vaidya (PW11) and Manoj Prakash (PW12). On 2.8.2008, when they were getting information from Advocate Arjun Kunjam and accused Mohd. Ashique Siddique, allegedly, accused Bhupendra Singh Thakur was also present there. It is the further case of the prosecution that Bhupendra Singh Thakur made an extra-judicial confession before Rajendra Vaidya (PW11) and Manoj Prakash (PW12) that he was also involved in the matter. Thereafter, both Rajendra Vaidya (PW11) and Manoj Prakash (PW12) made a written complaint (Ex.P24) before the Presiding Officer of the Tribunal. Thereafter, the Presiding Officer made a written complaint (Ex.P25) to the Station House Officer, Police Station Dantewada on 8.8.2008. First Information Report (Ex.P6) was registered. On completion of the investigation, a charge-sheet was filed against both accused Bhupendra Singh Thakur and Mohd. Ashique Siddique for offence punishable under Sections 409, 420, 467, 468, 471 and 120B of the Indian Penal Code. After trial, the Chief Judicial Magistrate, Dantewada, vide judgment dated 5.10.2015 passed in Criminal Case No.324 of 2009, acquitted both the accused of all the charges.

4. Being aggrieved by the judgment of acquittal dated 5.10.2015, the State preferred a criminal appeal, being Criminal Appeal No.14 of 2015 before the Sessions Judge, Dantewada. The Sessions Judge, vide the impugned judgment dated 1.9.2017, affirmed the judgment of acquittal with regard to accused Mohd. Ashique Siddique. The Appellate Court also acquitted accused Bhupendra Singh Thakur of the charges under Sections 409, 420, 468 and 471 of the Indian Penal Code, but convicted him for the offence under Section 467 read with Section 120B of the Indian Penal Code and sentenced him with rigorous imprisonment for 1 month and fine of Rs.500/- with default stipulation.

5. Being aggrieved by the judgment dated 1.9.2017 passed by the Sessions Judge, Criminal Revision No.224 of 2018 has been preferred by the State and Criminal Revision No.854 of 2017 has been preferred by Bhupendra Singh Thakur.

6. Shri Sangharsh Pandey, Deputy Government Advocate appearing for the State submitted that from perusal of the entire documents available on record, it is established that the offence has been committed by both the accused. Despite that, the Sessions Judge/Appellate Court has not taken the case of the prosecution in proper perspective. The Sessions Judge ought to have seen that the prosecution has proved its case beyond reasonable doubt against both the accused for the offence under Sections 409, 420, 468 and 471 of the Indian Penal Code also.

7. Shri Goutam Khetrapal, Learned Counsel appearing for accused Bhupendra Singh Thakur submitted that the Chief Judicial Magistrate/Trial Court has rightly acquitted Bhupendra Singh Thakur, but the Appellate Court failed to understand

the law of extra-judicial confession and convicted him. Extra-judicial confession is a very weak piece of evidence. Looking to the nature of the alleged offence, corroborative evidence in support of the extra-judicial confession is required, but it is not available. As stated by Rajendra Vaidya (PW11) and Manoj Prakash (PW12), Bhupendra Singh Thakur had only admitted that he was also involved in the matter, but there is no evidence on record to show that how was Bhupendra Singh Thakur involved in the alleged offence, what was his role in the alleged offence, with whom he conspired for the alleged offence and what did he do for withdrawal of the amount. There is also no evidence on record to show that he made any application for withdrawal or he got any amount out of the said withdrawal. The alleged forged memo was prepared by him or he had any role in preparation thereof is also not established. Therefore, no offence is proved against Bhupendra Singh Thakur and the Trial Court has rightly acquitted him of all the charges.

8. None appeared for accused Mohd. Ashique Siddique.

9. I have heard Learned Counsel appearing for the parties and perused the entire records of the Courts below minutely.

10. Before the Trial Court, the prosecution examined as many as 15 witnesses. From the statement of Claimant Madkami Bodo (PW3), it is clear that after receiving memo from his Counsel, she produced the same before the Bank. Badal Vishwakarma (PW4) has also stated that Madkami Bodo (PW3) and Munnaram (PW1) had come to the Bank along with concerned memo and they produced a TDR for Rs.2,13,361/- and the said amount of Rs.2,13,361/- was deposited in the Bank account of Madkami Bodo. Advocate Arjun Kunjam (PW6) has also not been able to state that what order was passed by the Tribunal for withdrawal of the amount since he was not present before the Tribunal on the relevant date. Though as stated by handwriting expert N.K. Sikkewal (PW15) signature put on the memo in question by the Presiding Officer was found to be forged, Investigating Officer Rajesh Jha (PW13) has admitted the fact that the said memo does not contain signature of any of the two accused. There is also nothing on record on the basis of which it is established that any of the two accused had played any role in preparation of the said forged memo. Therefore, apart from the statements of Rajendra Vaidya (PW11) and Manoj Prakash (PW12), there is nothing on record on the basis of which it could be inferred that any of the two accused were involved in the alleged offence. The Sessions Judge, only relying on the extra-judicial confession of Bhupendra Singh Thakur made before Rajendra Vaidya (PW11) and Manoj Prakash (PW12), held him guilty for the offence under Section 467 read with Section 120B of the Indian Penal Code.

11. While examining the scope of extra-judicial confession in (2012) 6 SCC 403 (Sahadevan v. State of Tamil Nadu), the Supreme Court held as follows:

"14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due

appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

15. Now, we may examine some judgments of this Court dealing with this aspect.

15.1 In *Balwinder Singh v. State of Punjab*, 1995 Supp (4) SCC 259, this Court stated the principle that: (SCC p., 265, para 10)

"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."

15.2 In *Pakkirisamy v. State of T.N.*, (1997) 8 SCC 158, the Court held that: (SCC p. 162, para 8)

"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."

15.3 Again in *Kavita v. State of T.N.*, (1998) 6 SCC 108, the Court stated the dictum that: (SCC p. 109, para 4)

"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 witnesses to whom it is made."

15.4 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 Ram*, (2003) 8 SCC 180 stated the principle that: (SCC p. 192, para 19)

"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: (SCC p. 192, para 19)

"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"

15.5 In *Aloke Nath Dutta v. State of W.B.*, (2007) 12 SCC 230, the Court, while holding the placing of reliance on extra-judicial confession by the lower courts in absence of other corroborating material as unjustified, observed: (SCC pp. 265-66, paras 87 & 89)

"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; and (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."

15.6 Accepting the admissibility of the extra-judicial confession, the Court in *Sansar Chand v. State of Rajasthan*, (2010) 10 SCC 604, held that: (SCC p. 611, paras 29-30)

"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. [Vide *Thimma and Thimma Raju v. State of Mysore*, (1970) 2 SCC 105, *Mulk Raj v. State of U.P.*, AIR 1959 SC 902, *Sivakumar v. State*, (2006) 1 SCC 714 (SCC paras 40 and 41 : AIR paras 41 and 42), *Shiva Karam Payaswami Tewari v. State of Maharashtra*, (2009) 11 SCC 262 and *Mohd. Azad v. State of W.B.*, (2008) 15 SCC 449]

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."

15.7 Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in *Rameshbhai Chandubhai Rathord v. State of Gujarat*, (2009) 5 SCC 740 held as under: (SCC pp. 772-73, para 53)

"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."

15.8 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. (Ref. Sk. Yusuf v. State of W.B., (2011) 11 SCC 754 and Pancho v. State of Haryana, (2011) 10 SCC 165.)

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 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."

12. In the light of above, if I examine the facts of the present case, I find that both Rajendra Vaidya (PW11) and Manoj Prakash (PW12) have only stated that on 2.8.2018, when they came to know that there was an order in favour of Claimant Madkami Bodo (PW3) for Rs.15,000/-, but the full amount of Rs.2,13,361/- had been withdrawn then they went to the Bar Room and met with Advocate Arjun Kunjam (PW6). At that time, Bhupendra Singh Thakur was also present there. Thereafter, when they came out, Bhupendra Singh Thakur also came out with them and when they started discussing about giving intimation to the Presiding Officer then Bhupendra Singh Thakur asked them not to intimate to the Presiding Officer so early. As stated by Rajendra Vaidya (PW11), at that time, when he said that Advocate Arjun Kunjam has fraudulently withdrawn the amount then Bhupendra Singh Thakur said that he was also involved in the matter and he, assuring that the money will be deposited, asked not to tell about this to the Officer. But, Manoj Prakash (PW12) has stated that when Rajendra Vaidya (PW11) talked about telling the matter to the Presiding Officer then

Bhupendra Singh Thakur asked not to tell the matter to the Presiding Officer so early then he (Manoj Prakash) asked Bhupendra Singh Thakur whether he was involved in the matter and on accepting by Bhupendra Singh Thakur, he (Manoj Prakash) assured that they will not tell the matter to the Presiding Officer. Even if these statements of Rajendra Vaidya (PW11) and Manoj Prakash (PW12) are accepted as they are, the only thing that establishes is that Bhupendra Singh Thakur accepted that he was involved in the matter. But, apart from this, Bhupendra Singh Thakur did not confess anything else like how and with whom he was involved in the offence, what was his role in the offence and in what manner the offence was committed. Mere his confession that he was involved in the matter does not establish that he himself committed the offence or he committed the offence with anyone else. Therefore, the alleged extra-judicial confession made by Bhupendra Singh Thakur appears to be a vague confession and without there being corroboration thereto, the conviction imposed upon Bhupendra Singh Thakur cannot be sustained. Therefore, the finding of the Appellate Court convicting Bhupendra Singh Thakur under Section 467 read with Section 120B of the Indian Penal Code is held to be perverse and is accordingly set aside. Bhupendra Singh Thakur is acquitted of the charge under Section 467 read with Section 120B of the Indian Penal Code. His acquittal of the charges under Sections 409, 420, 468 and 471 of the Indian Penal Code by the Trial Court as well as by the Appellate Court is also based on the evidence on record and does not call for any interference by this Court.

13. As regards accused Mohd. Ashique Siddique, no evidence is available on record on the basis of which he could be held guilty. The finding of acquittal of Mohd. Ashique Siddique arrived at by both the Courts below does not warrant any interference.

14. Consequently, Criminal Revision No.224 of 2018 preferred by the State is dismissed. Criminal Revision No.854 of 2017 filed by Bhupendra Singh Thakur is allowed.

15. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.