

(2018) 06 MP CK 0158

In the Madhya Pradesh High Court

Case No : Criminal Appeal. 423 Of 2009 (Jail Appeal)

Gheesa Ram & others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 29-06-2018

Acts Referred:

Madhya Pradesh Dakaiti Avam Vyapaharan Prabhavit Kshetra Ahdiniyam, 1981 —
Section 11, 13
Code Of Criminal Procedure, 1973 — Section 161
Indian Penal Code, 1860 — Section 34, 302

Citation : (2018) 06 MP CK 0158

Hon'ble Judges : SHEEL NAGU, J;VIVEK AGARWAL, J

Bench : Division Bench

Advocate : Ashok Kumar Jain, R.S. Ghuraiya

Judgement

Sheel Nagu, J.

This appeal is directed against the judgment of conviction and order of sentence dated 24.04.2009 rendered by Special Judge under Madhya Pradesh

Dacoity Vyapaharan Prabhavit Kshetra Adhiniyam (in short "MPDVPK Act"), Gwalior (M.P.) in Special Case No.19/2008 whereby all the three

appellants have been convicted u/Ss.302/34 of IPC read with Section 13 of MPDVPK Act sentencing them to life imprisonment along with fine of

Rs.500/- with default stipulations for the murder of Satish and Pradeep.

2. Pertinently, all the appellants are in custody since their arrest on 23.02.2008 except for a short period of few days on temporary bail during

pendency of this appeal.

3. The facts giving rise to instant case are that on 07.12.2007 information was received at the Police Station that on 13.10.2007 Satish and his cousin

(chachera bhai) Pradeep (Constable in SAF) had gone on motor cycle to village Rampura, Police Station Arone to gift a bell to the goddess of a

temple there. When the whereabouts of both Satish and Pradeep became unknown, their parents and relatives started searching for them. They came

to know that both the deceased had not reached the temple. Missing report of Pradeep and Satish was lodged on 21.10.2007 at Police Station on

26.10.2007. When search was being conducted in the jungle near Golar Hill, the abandoned motor cycle of the deceased was found and some distance

away the dismembered body of deceased- Pradeep was discovered. Information in that regard was given to Arone Police Station. During

investigation on 06.12.2007 Pratap Singh Parihar PW-13 informed Police on telephone that he has come to know from appellant that the appellants

have murdered both the deceased. Thereafter, the dead body of Satish was also recovered in a dismembered state after a month of discovery of dead

body of Pradeep. The dead body was recognized by the clothes left on the dead body. The dead body had been bitten and eaten up by animals. Blood

was also found on the spot. Crime No.110/2007 was registered after registration of dehati-nalsi for offences punishable u/Ss.302/34 read with 11/13

MPDP Act. The statement of various witnesses was recorded during investigation. After completing the necessary formalities chargesheet was filed.

On committal of case to the Court of Sessions, appellants abjured guilt and sought trial. The appellants raised the defence of false implication.

4. The prosecution produced 14 PWs namely Rambharosi as PW-1, Rajendra Singh as PW-2, Laxman as PW-3, Munna as PW-4, Gajendra Singh as

PW-5, Ramprasad as PW-6, Rajkumar as PW-7, Kamal Singh as PW-8, Mahesh Sharma as PW-9, Dr. J.N. Soni as PW-10, Jagdish Silawat as PW-

11, K.L. Magraiya as PW-12, Pratap Singh as PW-13 & Ramswaroop as PW-14 while the appellants did not produce any material in support of

defence.

5. The Trial Court after marshaling the evidence on record returned a finding of guilt in respect of all the three appellants convicting u/S.302/34 and

Section 13 of MPDVPK Act and sentencing them to life imprisonment along with fine and default stipulations. The conviction of all the three

appellants is primarily based on the DNA report Ex-P/17 which opines that one of the dead bodies to be of Satish and on extra judicial confession

made by the appellants to PW-13/Pratap Singh.

6. As regards the DNA report Ex. P/17 there can be no quarrel about the same and therefore, one of the dead bodies being of Satish stands prove.

However, there is no such DNA profiling in regard to the other dead body to establish whether the same was of Pradeep or not?

6.1 Pertinently, it seems that the trial Court has jumped to the conclusion that the dismembered dead bodies found in the Jungle were the result of

homicide. The expression 'homicide' is defined in the 'Oxford Dictionary' as follows:-

â??Homicide â?" the illegal killing of one person by anotherâ??

7. Thus, unless it is found that the dead bodies presumably of deceased were a result of act of human being the factum of homicide can not be

legitimately presumed.

7.1 The post mortem report in regard to Satish does not disclose any anti mortem injury on the body. However, since dead body made available for

autopsy was dismembered and in decomposed state, it can be possible that the injury even if caused were not visible. However, this probability

remains in the realm of suspicion which cannot take the place of proof. In regard to the other dead body of Pradeep neither post mortem nor DNA

test was conducted and therefore, in that regard even a suspicion of homicide cannot be raised.

8. The other piece of evidence on which the impugned conviction is founded is the extra judicial conviction which is revealed by the testimony of PW-

13/Pratap Singh who deposed that during the process of search being conducted by the relatives of both the deceased, PW-13 who happens to be

relative of the deceased and was heading towards Sirsa met the three appellants. PW-13 testifies that these 3 appellants searched him and let him go

since he had nothing valuable to part with. PW-13 further testifies that when he asked the appellant about the whereabouts of both the deceased, the

appellants inform that they have put both the deceased to death and extended threat to PW-13 of dire consequences if he disclosed this fact to

anyone. PW-13 there after states that he confidentially revealed to the SHO of Police Station Arone-Shri Katara about this extra judicial confession

made by the appellants.

8.1 It is interesting to note about the extra judicial confession that PW-13 on

receiving the information of appellants having murdered the deceased did not disclose this information to anyone for nearly 45 days till the statement of PW-13 was recorded u/S 161 of Cr.P.C. There is no plausible explanation by PW-13 or by the police about the delayed revelation of this extra judicial confession. 8.2 An extra judicial confession is not a substantive piece of evidence. Moreso, it is a weak piece of evidence and ordinarily requires aid and assistance of other cogent and reliable implicative evidence to sustain a conviction. An Extra Judicial confession should not suffer from material and inherent improbability and should inspire confidence or else it would not be safe to find the accused guilty solely on that basis. The Apex Court in various decisions i.e. Dwarkadas Gehanmal Vs. State of Gujrat reported in (1999)1 SCC 57, Pancho Vs. State of Haryana reported in (2011)10 SCC 165, Sahadevan and another Vs. State of Tamil Nadu reported in (2012) 6 SCC 403, Kashmira Singh Vs. The State of Madhya Pradesh reported in AIR 1952 SC 159, & Haricharan Kurmi Vs. State of Bihar reported in AIR 1964 SC 1184 has laid down the principles and the pitfalls to be kept in mind while dealing with extra judicial confession to bring home the charges. The above said decision of Apex Court in the case of Tejinder Singh alias Kaka Vs. State of Punjab reported in 2013(12) SCC 503, has laid down as follows after analyzing all it's earlier verdicts :-

22. Further, the learned senior counsel has rightly placed reliance upon the testimony of PW-7 to whom, according to him, the accused persons namely, Gurdeep Singh, Harnek Singh and Sunny Lal Paswan, co-accused, made a disclosure statement describing the whole incident to him on 12.06.2000 who has neither recorded the alleged extra judicial confession nor made the disclosure of the said statement within reasonable time but 16 days to disclose the extra judicial confessions made by the accused persons to inform to the jurisdictional police. The delay in informing the police regarding the extra judicial confessional statement alleged to have made to him by some of the accused has not been explained by PW-7 and the reason sought to be given by him for non disclosure of the same to the police cannot be accepted by this Court as it is not natural and also not satisfactory.

23. Further, the learned senior counsel Mr. Tulsi has rightly placed reliance upon the judgment of this Court in Dwarkadas Gehanmal's case (supra)

with regard to the conduct of the witness in the said case which is inconsistent with the conduct of an ordinary human being. The observations made in the abovementioned case with all fours applicable to the facts situations of the case in hand, that if extra judicial confessional statement was made by the accused as stated by him in his statement before the trial court were to be true, it was his duty to disclose the same immediately to the police or to the relatives of the deceased. That has not been done by him and therefore his evidence is not believable.

24. The extra-judicial confession is a weak form of evidence and based on such evidence no conviction and sentence can be imposed upon the appellants and other accused. In support of this proposition, the relevant paragraphs of Pancho's case are extracted hereunder: (SCC pp.169 & 171-72, paras 16,25& 27)

16. The extra-judicial confession made by A-1, Pratham is the main plank of the prosecution case. It is true that an extra-judicial confession can be used against its maker, but as a matter of caution, courts look for corroboration to the same from other evidence on record. In Gopal Sah v. State of Bihar this Court while dealing with an extra-judicial confession held that an extra-judicial confession is on the face of it, a weak evidence and the courts are reluctant, in the absence of a chain of cogent circumstances, to rely on it for the purpose of recording a conviction. We must, therefore, first ascertain whether the extra-judicial confession of A-1, Pratham inspires confidence and then find out whether there are other cogent circumstances on record to support it."

25. This Court further noted that: (Kashmira Singh case, AIR p. 160, para 10)

'10. ... cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession, he would not be prepared to accept.

27. This Court in Haricharan case further observed that Section 30 merely enables the court to take the confession into account. It is not obligatory on the court to take the confession into account. This Court reiterated that a confession cannot be treated as substantive evidence against a co-

accused. Where the prosecution relies upon the confession of one accused against another, the proper approach is to consider the other evidence

against such an accused and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the

charge framed against the said accused, the court turns to the confession with a view to assuring itself that the conclusion which it is inclined to draw

from the other evidence is right.

25. Further, relevant paragraphs from Sahadevan's case are extracted hereunder: (SCC pp.410 & 412-13, paras 14 & 16)

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.

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.â??

26. Reliance placed upon the decisions of this Court in the case of Sahadevan's case (supra) supports the case of the appellant herein. Hence, the

reliance placed upon the evidence of PW-7 by both the Additional sessions judge and the High Court to convict the appellant and sentencing him for

the offence under Section 201 IPC is erroneous in law for the reason that they have not appreciated the testimony of PW-7 in the backdrop of the

legal principles laid down by this Court in the above referred cases on the question of extra judicial confession said to have been made by some of the

accused to him. Non disclosure of the same either on the same day or within reasonable time either to the police or to the family members of the

deceased does not inspire confidence to be accepted as testimony to sustain the conviction and sentence. After 16 days he had disclosed it to the

jurisdictional police which would clearly go to show that the conduct of the said witness is unnatural and improbable to believe and his conduct is not

that of an ordinary human being.

27. Therefore, the conviction and sentence imposed upon the appellant in CrI.A. No.1279 of 2008 by placing reliance on the testimony of PW-7 along

with testimony of PW-8 and PW -9 suffer from major discrepancy and therefore, the appeal insofar as Tejinder Singh is concerned must succeed.

9. Pertinently, in the above said case of Tejinder Singh (supra), the Apex Court set aside the conviction of accused inter alia on the ground that the

extra-judicial confession relied upon by the trial Court and the appellate court, was given to a prosecution witness who disclosed about the same to the

police after 16 days without any explanation for the delayed disclosure.

9.1 When the facts prevailing in the instant case are tested on the anvil of the law laid down as aforesaid, suspicion may arise that the extra judicial

confession said to be made by the appellants to PW-13 points a finger of guilt towards the appellants, but since the extra judicial confession is writ

large with improbabilities of inordinate delayed disclosure to anyone by PW-13, this Court ought not to and cannot base conviction on the said extra

judicial confession.

10. The entire case of prosecution hinges upon the said two materials i.e. DNA report and the extra judicial confession which have been explained

above to be of no probative value. In the criminal jurisprudence prevailing in our country with such farfetched and weak evidence which can at best

be categorized as "suspicion", it would not be safe to sustain a conviction of the appellants especially when the prosecution failed to prove that

death was homicide and has also failed to eliminate the possibility of death due to attack by wild animals, which is a possibility due to presence of

medical evidence of gnawing and animal bite marks found on the dismembered body of both the deceased.

11. In view of the above discussion, this Court is of the considered view that impugned judgment dated 24.04.2009 convicting the appellants for the

offence of murder of deceased Satish and Pradeep can not be upheld and thus has to pave the way of extinction.

12. Consequently, the impugned judgment, conviction and sentence passed on 24.04.2009 by the Special Judge under Madhya Pradesh Dacoity

Vyapharan Prabhabit Kshetra Adhiniyam (in short "MPDVPK Act"), Gwalior (M.P.) in Special Case No.19/2008 is set aside. If the appellants

are not required in any other case, they be set free.

13. A copy of this judgement be sent to the trial court concerned along with the record of this case for information.