
(1971) 10 BOM CK 0002

In the Bombay High Court

Case No : Criminal Appeal No. 111 of 1970 with Criminal Application No. 173 of 1971

Prabhakar Narayan Upadhyay

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-10-1971

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1972) 74 BOMLR 299 : (1972) MhLj 583

Hon'ble Judges : S.K. Desai, J;Chitale, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Desai, J.—His Lordship after considering the evidence in the case, proceeded. These then are the various circumstances that lend support to and corroborate the three extra-judicial confessions which, it must be conceded, is certainly the main evidence led by the prosecution against the appellant. A number of submissions were made by the learned advocate Mr. Abhale appearing for the appellant during the course of the arguments, and he submitted that the evidence on record was insufficient for the conviction of the appellant. He submitted : (i) that the evidence furnished by the extra-judicial confessions has always been regarded to be weak evidence, (ii) that the evidence furnished by an extra-judicial confession maybe used only as a corroborative piece of evidence and not as the main evidence on which the conviction of an accused person can be based, and (iii) that even if the conviction may be based on the extra-judicial confessions, the extra-judicial confessions were required to be substantially corroborated, and that the corroboration available in this case was not sufficient to warrant the conviction of the appellant. Mr. Abhale cited a number of authorities in this connection.

2. Principal reliance was placed by the learned advocate for the appellant on the observations of Subbarao, J. (as he then was) in *Sahoo Vs. State of Uttar*

Pradesh, . The appellant Sahoo was charged u/s 302, Indian Penal Code, and it was alleged that he had killed Sunderpatti, the wife of his eldest son. Except for the extra-judicial confession, the entire evidence in the case was circumstantial. The observations relied upon by Mr. Abhale read as follows (p. 174):

But, there is a clear distinction between the admissibility of an evidence and the weight to be attached to it. A confessional soliloquy is a direct piece of evidence. It may be an expression of conflict of emotion; a conscious effort to stifle the pricked conscience; an argument to find excuses or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime. The tone may be soft and low; the words may be confused; they may be capable of conflicting interpretations depending on witnesses, whether they are biased or honest, intelligent or ignorant, imaginative or prosaic, as the case may be. Generally they are mutterings of a confused mind. Before such evidence can be accepted, it must be established by cogent evidence what were the exact words used by the accused. Even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence.

(italics supplied).

3. Mr. Abhale also referred us to a Full Bench decision of the Madhya Bharat High Court in *Fakirchand v. The State* AIR [1955] M.B. 119. In that case it has been held by the Full Bench as follows (p. 121):

Generally speaking, evidence of extra-judicial confession is a very weak kind of evidence. It has to be scrutinised minutely and received with great caution. In dealing with extra-judicial confession, it should be borne in mind that a witness may easily fabricate wholly or in part a confessional statement and it is very difficult to expose the falsity.

4. The third case very strongly relied upon by Mr. Abhale was *Bhagan v. State of Pepsu* A.I.R.[1955] Pep 33. of that judgment it has been observed that ordinarily it is unsafe to base conviction on an extra-judicial confession. "It is not possible to ascertain the exact words and the language used by the confessing accused. Therefore, it is not of such a nature as to entitle it to any weight". It may be mentioned that in the *Pepsu* case the Court held that the extra-judicial confession had been extorted from the accused and, therefore, refused to rely on the same. It is undoubtedly true that a confession must be a voluntary one and the Court, before it can base a conviction on a confession, must satisfy itself that it was voluntary and true.

5. It is not possible to agree with the observations in the Full Bench decision of the Madhya Bharat High Court (*Fakirchand v. The State*) that the evidence of extra-judicial confession is a weak kind of evidence. It is true that the evidence of extra-judicial confession has to be scrutinised carefully and received with great caution. In this connection, the Court would have to consider whether it was natural for the accused person to have: confided in and confessed to the person

who is deposing to the confession. The relationship of that person with the accused before the Court is most material and vital. Then again, the Court would have to consider what has been confessed to and whether the same is consistent with the facts about the incident as deposed to by the other witnesses and discovered during the course of the police investigation. The scrutiny has to be minute and great caution has to be exercised. It is also to be considered whether the person deposing to the extra-judicial confession had any motive or other reason for falsely involving the accused person. It is also to be considered whether such person is otherwise a satisfactory witness. It must also be borne in mind by the Court considering the evidence of such person whether there is any likelihood of such person being himself concerned with the crime in question and, therefore, falsely implicating the accused. If after such careful scrutiny, the evidence of extra-judicial confession is regarded as acceptable and trust worthy, such evidence cannot be considered to be inferior in any way to the other pieces of evidence. Strict proof undoubtedly has to be insisted upon; but once such proof is forthcoming, the evidence of extra-judicial confession cannot undoubtedly be characterised as a "weak type of evidence".

6. As far as Sahoo's case is concerned, it does not appear that the use to be made of the evidence of extra-judicial confession was a point which arose for determination in that case. There were a number of circumstances found against the appellant Sahoo which were reinforced by the evidence as to extra-judicial confession. In our view, the sentence from the passage in the judgment in Sahoo's case above quoted does not lay down as a principle of law that an extra-judicial confession can be utilised only as a corroborative piece of evidence. It is, in our opinion, a mere observation—certainly—entitled to due weight—but no more than that. Our conclusion in this behalf is strengthened by observations to be found in other decisions of the Supreme Court to which reference may now be made.

7. It may be mentioned that Mr. Abhale has also referred us to Ram Chandra and Another Vs. State of Uttar Pradesh, . In para. 6 of that decision the Supreme Court has laid down the rule of prudence to be applied by the Courts in dealing with extra-judicial confessions. It has been observed : "Normally speaking, it would not be quite safe, as a matter of prudence if not of law, to base a conviction for murder on the confession of the alleged murderer". In that case the Supreme Court went on to hold that the story of the murder as given in the extra-judicial confession of the appellant before it was hard to believe. In particular, the description of the manner in which the murder was committed was not consistent with the facts found in the investigation. Jagannadhadas, J., went on to observe : "But where the proof of the factum of the murder is itself solely dependent upon the confession, the apparent improbability of the manner in which the murder is said to have been brought about in the confession would be a cogent circumstance against the confession being relied upon". The observations in this case suggest, in our opinion, that in a criminal case conviction can be based upon an extra-judicial confession, provided it is duly proved and that it

does not contain anything which is inconsistent with the facts as subsequently found. In Ram Chandra's case the part of the confession dealing with the actual commission of the murder viz. the manner in which it was committed was not accepted by the Court and, therefore, the evidence of extra-judicial confession was regarded as unreliable. This case, in our opinion, lays down that the evidence as to extra-judicial confession must be reliable, and if it is reliable it can certainly be the basis of a conviction though, as a rule of prudence perhaps not the only basis of a criminal conviction.

8. The rule of caution was reiterated in Pandit Ram Narain Vs. The State of Uttar Pradesh and Others, where it was observed that usually and as a matter of caution Courts require some material corroboration to an extra-judicial confessional statement, corroboration which connects the accused person with the crime in question. Similarly, in Mulk Raj v. State of U.P. A.I.R.[1959] S.C. 902, the weight to be attached to the evidence of extra-judicial confession came up for consideration. It was observed that an extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidence in convicting the accused. The confession will have to be proved just like any other fact. The value of the evidence as to the confession, just like any other evidence, depends upon the veracity of the witness to whom it is made. It was further observed that the Court would normally require the witness to give the actual words used by the accused as nearly as possible, but that it was not an invariable rule that the Court should not accept the evidence if the actual words were not given by the witness but only the substance was given. These decisions also suggest that a conviction can be based on the evidence of an extra-judicial confession and that, it is not merely to be used as a piece of corroborative evidence.

9. The point was again before the Supreme Court in Ram Singh Vs. State of Uttar Pradesh, . It was observed by Raghubar Dayal, J., who gave the judgment of the Court : "Extra-judicial confessions are not usually considered with favour, but that does not mean that such a confession coming from a person who has no reason to state falsely and to whom it is made in circumstances which tend to support his statement, should not be believed". In that case, apart from the extra-judicial confession, the supporting pieces of evidence pertained to Ram Singh having enmity with the deceased and his conduct in purchasing a sword and delivering it stained with human blood. According to the Supreme Court this circumstance, added to the extra-judicial confession, fully established that the appellant had committed the murder, and it was held that he was rightly convicted and sentenced to death u/s 302 of the Indian Penal Code. It may be noted that Subbarao, J. (as he then was), was a party to this judgment and the conviction was substantially based upon the extra-judicial confession and it was not regarded merely as corroborative evidence.

10. Our attention was drawn by Mr. Barday appearing for the State to a very recent decision of the Supreme Court in Thimma and Thimma Raju Vs. State of

Mysore, . In that case the person deposing to the extra-judicial confession was himself suspected of the crime during the course of the investigation. On that ground the High Court rejected the evidence of extra-judicial confession. The Supreme Court, however, reversed the finding of the High Court and held that this was not a cogent ground for holding that he had concocted the confession or for coming to the conclusion that the confession was not voluntary or true. It was further held that an unambiguous confession, if admissible in evidence and free from suspicion of falsity, is a valuable piece of evidence possessing a high probative force. But in the process of proof of a confession the Court must be satisfied that it is voluntary, that it does not appear to be the result of inducement, threat or promise, and that the surrounding circumstances must not indicate that it is inspired by some improper or collateral consideration, suggesting that it may not be true. All the relevant factors, it was observed, have to be considered, such as the person to whom the confession was made, the time and the place of making it, the circumstances in which it was made and finally the actual words. In Thimma's case the Supreme Court considered, whether prosecution witness No. 4 in that case, who had given evidence of the extra-judicial confession, was to be believed. It was held by the Supreme Court that he had no motive or reason to concoct the story of confession. Dua, J., thereafter went on to observe : "The words used are quite clear and admit of no doubt of the appellant's guilt. And then though the evidence of prosecution witness No. 4 does not need any corroboration, we find that corroboration in material particulars is forthcoming on the record" (*italics ours*). These observations seem to indicate that if after a careful and cautious scrutiny the evidence as to extra-judicial confession was held truthful and acceptable and the words were quite clear and unequivocal, then conviction, in the opinion of Dua, J., can be based on such confession without any corroboration. It is also important to note that in para. 9 of the judgment Dua J. has considered what facts would amount to corroboration in material particulars of the extra-judicial confession. In Thimma's case corroboration was furnished by the existence of the dead body and of other articles at the place where they were later found and the subsequent visit of the accused person and prosecution witness No. 4 to that spot.

11. As already stated, we have cautiously and carefully scrutinised the evidence given by all the three witnesses to whom the extra-judicial confessions were separately made by the appellant viz. Ramachandra Nakate (P.W.12), Sudhakar Dixit (P.W. 13) and Arthur Pareira (P.W.14). We have considered their relationship with the appellant, the circumstances in which the confessions came to be made as also the contents of the alleged confessions made to these three persons. Bearing in mind, all the factors indicated above we have formed the opinion that these three persons are reliable witnesses, that they had no reason or motive to falsely implicate the appellant and. that the appellant did not make these confessions to them by reason of any inducement, threat or promise. It is impossible to accept the appellant's contention that Ramchandra Nakate is

giving evidence against him by reason of police pressure or that by reason of such police pressure he has even induced his friend Arthur Pareira to falsely implicate the appellant. It is similarly impossible to accept the appellant's contention that Sudhakar Dixit is falsely involving the appellant because previously there was an exchange of words between the appellant and Sudhakar Dixit over a loan of Rs. 50.

12. In our opinion, further, the extra-judicial confessions, particularly the one made to Ramchandra Nakate, are borne out and corroborated substantially by the several facts which have been brought out in evidence and to which reference has already been made in the earlier part of this judgment. The subsequent conduct of the appellant and the course of investigation lend support to our view that the extra-judicial confessions were made by the appellant to these three persons. In these circumstances we are compelled to conclude that the extra-judicial confessions, particularly the one made to Ramchandra Nakate, are true and that it would be proper and safe in this case to act on these extra-judicial confessions.

13. In the result, we see no reason to differ from the learned Additional Sessions Judge both as regards the conviction of the appellant and the sentence. The appeal accordingly fails and will stand dismissed.