
(2018) 08 BOM CK 0130
In the Bombay High Court
Case No : Criminal Appeal No. 174 of 2011

Sharad S/O Prabhakar Waghmare

APPELLANT

Vs

State Of Maharashtra Thr. P.S.O. Umrer

RESPONDENT

Date of Decision : 21-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302

Citation : (2018) 08 BOM CK 0130

Hon'ble Judges : P.N. DESHMUKH, J; SWAPNA JOSHI, J

Bench : Division Bench

Advocate : R.M.Daga, S.J. Kadu

Final Decision : Allowed

Judgement

MRS.SWAPNA JOSHI, J.

1. The instant Appeal takes exception to the judgment and order dated 31st December, 2010 delivered by learned Extra Joint Ad-hoc Additional

Sessions Judge, Nagpur in Sessions Trial No. 291/2010, convicting the appellant under section 302 of the Indian Penal Code and sentencing

him to suffer imprisonment for life and to pay a fine of Rs. 500/-, in default, to suffer R.I. for one month.

2. The prosecution case can be summarized as under :

Deceased-Prabhakar was residing at Umrer, Dist. Nagpur. Appellant- Sharad is his son, who was residing at village Durkheda along with

his family. On the date of incident i.e. on 23rd April 2010, Prabhakar went to the house of his son at Durkheda. The appellant made enquiry

with Prabhakar about his mother. However instead of giving proper reply, the Prabhakar started hurling abuses to his son and said that he

had killed his wife about 10 to 12 years back. Due to the said behaviour of Prabhakar, the appellant got annoyed to the hilt and he

assaulted Prabhakar by means of a wooden rafter and stone. Due to the said assault, deceased received bleeding injuries on his head, ears and

hands and succumbed to his injuries instantaneously. It is the case of the prosecution that immediately after the incident, the appellant met PW3-

Chandrashekhar Gaikwad, who was the Police Patil of the Durkheda village and informed him that he had committed murder of his father by

assaulting by means of a wooden rafter and stone. In order to verify the information received from the appellant, the Police Patil proceeded

to the house of the appellant where he found the dead body of Prabhakar lying in the courtyard. One stone, one wooden rafter,

scarf smeared with blood were found at the place of the incident. PW3 Chandrashkhar proceeded to Umrer Police Station and lodged his

complaint (Exh.13) against the appellant. On the basis of the said complaint, Police Inspector PW7 Madhukar Geete registered the offence

vide Cr. No. 43/2010 for offence punishable u/s. 302 of the IPC. PW7 -Geete visited the place of the incident and recorded the spot

panchnama (Exh.16). From the place of the incident he took charge of one stone smeared with blood, one wooden rafter, plain soil, soil with blood

and one scarf. PW7 then prepared inquest panchnama of the dead body of Prabhakar (Exh.30). He sent the dead body to Rural Hospital

Umrer for autopsy. PW 7-Geete recorded the statements of the relevant witnesses. On the same day, he arrested the appellant. PW7 sent

all the seized articles to the Chemical Analyser's office for its analysis. After completion of investigation, the charge-sheet was filed. The case was

committed to the court of Sessions. On analysis of the evidence and after hearing both the sides, the learned trial judge mainly relying upon

the extra judicial confession made by the appellant, convicted the appellant as aforesaid.

3. We have heard Shri R.M. Daga, learned counsel for the appellant and Shri S.J.Kadu, learned Additional Public Prosecutor for the

respondent-State. With their able assistance we have carefully gone through the entire record and proceedings of the case.

4. Learned counsel for appellant vehemently argued that the learned trial Judge has not assessed the evidence led by the prosecution in its

right perspective and has erroneously convicted the appellant. He contended that except PW3 Chandrashekhar, all other witnesses have not

supported the prosecution case and the learned trial Judge relying upon his evidence, who has stated about extra judicial confession made by

the appellant, convicted the appellant. He submitted that the extra judicial confession is a weak type of evidence and the learned trial Judge

should not have relied upon the sole evidence of PW3 and convicted the appellant on the basis of the said evidence.

5. Per contra, Mr. S.J. Kadu, learned APP supported the impugned judgment and contended that the learned trial Judge has rightly convicted the

appellant relying upon the evidence of PW3, Police Patil, which categorically speaks about the extra judicial confession made by the appellant.

6. On hearing rival contentions of both sides, it would be advantageous to go through the evidence led by the prosecution. The prosecution

has examined in all seven witnesses. PW1-Sau. Prabha Wase, is a neighbour of the appellant; PW 2-Sau. Vaishali is the wife of the

accused; PW3-Chandrashekhar is the Police Patil;

PW4-Ramchandra Wase is the panch witness on the point of spot panchnama; PW5-Dr. Anil Mersham who has conducted

autopsy; PW 6-Krishna Dighore is the panch witness on the point of seizure of clothes of the deceased as well as appellant and PW 7-

Madhukar Geete is the investigating officer.

7. At the outset, we would like to make it clear that except PW3-Chandrashekhar Gaikwad, who is the Police Patil, rest of the witnesses did not

support the case of the prosecution.

8. The testimony of PW3 demonstrates that on 23.4.2010 between 2 to 3 pm, while he was proceeding to his field, the appellant met

him on the road. On making enquiry as to what had happened, the appellant informed him that when he asked his father about his mother,

his father informed him that she had deserted him long back and he killed her. Thereafter his father started abusing. The appellant got

annoyed and assaulted his father by means of a rafter of a cot due to which he died on the spot. PW3 then went to the house of the

appellant and saw the dead body of deceased in the pool of blood, lying in the courtyard. PW3 then proceeded to the police station and lodged

his complaint (Exh.13).

9. During the cross-examination it was suggested to PW3 that the appellant is residing on an encroached land. He however denied that he

himself demanded an amount of Rs. 5000/- from the appellant to regularize the encroachment that count, altercations took place between

him and the appellant and therefore he was not in good terms with the appellant.

10. A meticulous scrutiny of testimony of PW3-Chandrashekhar shows that the appellant did not make the statement voluntarily before

PW3. On making enquiry by PW3, the appellant stated before him that infuriated by hurling abuses by his father on his saying that his mother

had deserted him long back and he killed her, he assaulted his father by means of rafter of a cot due to which he died on the spot. Moreover, it is

not clear as to why the appellant would repose faith in PW3 and make a statement before him.

11. It is well settled that an extra judicial confession of a guilt can be relied upon by the court if it is voluntary and true and made in fit state of mind.

The evidentiary value regarding the confession depends upon the truthfulness of the witnesses to whom it has been made and is to be proved like any

other evidence. It is not open to the court to start with a presumption that extra judicial confession is a weak type of evidence. The nature of the

circumstances, the time when the confession was made is relevant. A confession can be relied upon and conviction can be based upon it if the

witnesses are credible and such witnesses are not found to be inimical to the accused. It is necessary to see that the words spoken by the witnesses

are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime. Such extra judicial confession can be accepted by

the court.

12. In this context, it would be advantageous to refer the guidelines of the Honorable Apex Court in the case of Chattar Singh and another .vs. State

of Haryana, reported in 2009 ALL MR (Cri) 936 (SC).

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 value of the evidence as to the confession depends on the

reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. 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, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

It could thus be seen that the Hon'ble Apex Court in clear terms held that the value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is further held that it is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. It has been held that 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. A conviction can be based on the basis of such a confession if words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime. It has been held that after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction.

13. The guidelines issued are as under :

17..... If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is

admissible in evidence.Â One important question, in regard to which the court has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession.Â The question whether a confession is voluntary or not is always a question of fact.Â All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the court is satisfied that in its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt.Â (See R.V. Warickshall).Â It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true.Â Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it.Â So where the statement is made as a result of harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary.Â The inducement may take the form of a promise or of a threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not.Â (See Woodroffe's Evidence, 9th Edn., p. 284).Â A promise is always attached to the confession alternative while a threat is always attached to the silence alternative; thus in one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm.Â It must be borne in mind that every inducement, threat or promise does not vitiate a confession.Â Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue

confession.Â On the aforesaid analysis the court is to determine the absence of presence of an inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused.Â If the inducement, promise or threat is sufficient in the opinion of the court, to give the accused persons grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession.Â The words â??appear to himâ?? in the last part of the section refer to the mentality of the accused.

18. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. Â 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 value of the evidence as to the confession depends on the reliability of the witness who gives the evidence.Â It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence.Â Â It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession.Â 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, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it.Â After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.â??

14. In Balwinder Singh vs. State of Punjab, reported in AIR 1987 SC 350, the Honâ??ble Apex Court observed as under :

â??10.Â An extra-judicial confessionÂ byÂ itsÂ very nature is rather a weak type of evidence and requires appreciationÂ withÂ a great deal of care andÂ caution.Â WhereÂ anÂ extra-judicialÂ confessionÂ is surrounded by suspicious circumstances, itsÂ credibilityÂ becomes doubtful

and it loses its importance.

15.2. In *Pakkirisamy v. State of T.N.*,¹⁸ the Court held that :

“... 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.*, the Court stated the dictum that :

“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 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*, stated the principle that :

“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 :

“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.*,¹⁹ the Court, while holding the placing of reliance on an extra-judicial confession by

the lower courts in absence of other corroborating material as unjustified, observed:

“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.

15. On going through the aforesaid observations by the Hon'ble Apex Court, we can come to the conclusion that the extra judicial confession must

be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses should be clear, unambiguous and should clearly

convey that the accused is the perpetrator of the crime. The extra judicial confession should inspire the confidence of the court and it can be the

basis of conviction.

16. In the case of Ishwar Pandurang Masram vs. The State of Maharashtra, reported in 2013 ALL MR (Cri) 2750, it is observed that extra-judicial

confession was made by the accused before witnesses was not voluntary but all answers were given in reply by the accused, in the

query made by his superior in an inquiry. In these circumstances the Division Bench of this Court has held that the extra judicial

confession should not be relied upon. This Court took recourse to the judgment in the case of Sahadevan and another vs. State of Tamil Nadu,

reported in (2012) 3 SS (Cri) 146. The Hon'ble Apex Court has in unequivocal terms held that the extra-judicial confession is a weak type of

evidence by itself and it has to be examined by the court with greater care and caution. It should be voluntary and truthful. It should inspire

confidence. The Hon'ble Apex Court has held that 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 prosecution evidence. It was further held that if the basis of conviction

is an extra-judicial confession then it should not suffer from any material discrepancies and inherent improbabilities.

17. If we examine the extra-judicial confession made by the appellant to PW3 keeping in mind the aforesaid principles, it is noticed that the

alleged extrajudicial confession was not made voluntarily but the appellant had answered in reply to the query made by PW 3 who

allegedly met him on the road. Moreover, there are no supporting cogent circumstances on record corroborating the version of PW3.

18. Now coming to the prosecution case, so far as the testimony of other

witnesses is concerned, PW1 in cross-examination by learned APP on declaring hostile, has categorically denied that the wife of the appellant informed him that the appellant had assaulted his father by means of a wooden rafter on his hands and legs and he lifted one stone and assaulted by means of that stone on the head of deceased, due to which the Prabhakar got bleeding injuries and he then succumbed to the injuries. PW2 who is the wife of the appellant, denied in her cross-examination conducted by the learned APP on declaring her hostile, that her husband dealt blows of rafter and stone on the head and hands of her father-in-law and killed him. PW6 Krishna who is the Panch witness in whose presence allegedly the clothes of the deceased as well as the appellant were taken charge by police, during his cross-examination conducted by learned APP on declaring him hostile, did not support the prosecution case. He has simply stated that he had signed on the panchnamas Exhs. 24 and 25 respectively. PW6 categorically denied that on 24.4.2010 in his presence police took charge of the bloodstained clothes of Prabhakar. He further denied that the police also took charge of the clothes of the accused viz full-pant and T-shirt which were stained with blood, in his presence. Although PW6 did not support the case of the prosecution no other panch witness on this point was examined by the prosecution. Surprisingly, the evidence of PW7-Geete is silent on the aspect of seizure of clothes of the deceased as well as the accused. PW7 did not state that he had taken charge of the clothes of the deceased vide panchnama Exh.24 and clothes of the accused vide Exh.25. Similarly, the testimony of PW7 does not throw any light on the aspect of sending the seized articles to the CA office for its analysis. No doubt the testimony of Panch witness PW4-Ramchandra Wase shows that at the place of the incident one stone and a wooden rafter were lying near the dead body of Prabhakar, however, those articles were not produced in the court and were not shown to the witnesses including the Investigating officer PW7 who confirmed that those articles were taken charge from the place of the incident. On the contrary, the testimony of PW7 shows that there were no special identification marks on the articles which he had taken charge from the place of the incident. Thus, there is no corroboration to the

testimony of PW3 with regard to the seizure of articles lying on the spot, so also the clothes of deceased as well as accused. Similarly there is evidence of the I.O. on record to show that those articles which were allegedly taken charge by him were sent to the CA office for its analysis. The prosecution has failed to produce the CA report on record. Thus, there is absolutely no corroboration to the testimony of PW3. The prosecution has failed to prove the live link in order to connect the appellant with the guilt.

19. Thus, the confessional statement of the appellant relied upon by the prosecution which is a weak type of evidence does not conclusively establish that the appellant has committed the murder of the deceased. It is the specific case of the prosecution that PW3 was not in good terms with the appellant as he had encroached upon a piece of land and carried out illegal construction. PW3 who was a Police Patil demanded an amount of Rs. 5000/- as illegal gratification from the appellant. However as the appellant failed to hand over the said amount to him, PW3 has implicated him in a false case. The defence of the appellant appears to be probable one. The learned trial Judge ought to have considered the aforesaid facts and circumstances of the case in its proper perspective. As such, we are of the considered view that the prosecution has miserably failed to prove its case beyond reasonable doubt. Hence the following order:

- (a) Criminal Appeal No. 174/2011 is allowed.
- (b) The impugned judgment and order dated 31.12.2010 in Sessions Trial No. 291/2010 passed by learned Extra Joint Ad-hoc Additional Sessions Judge-2, Nagpur, is set aside.
- (c) The appellant is acquitted of the offence punishable u/s 302 IPC.
- (d) The appellant is on bail. His bail bonds shall stand cancelled.
- (e) Muddemal property being worthless be destroyed after the appeal period is over.