

(2015) 07 BOM CK 0391
In the Bombay High Court
Case No : Criminal Appeal No. 1163 of 2008

Umesh Jagnu Sarjare

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302

Citation : (2015) 07 BOM CK 0391

Hon'ble Judges : V.K. Tahilramani and Dr. Shalini Phansalkar Joshi, JJ.

Bench : Division Bench

Advocate : Rebecca Gonsalvez and Chetan Alai, for the Appellant; A.S. Shitole, A.P.P., for the Respondent

Final Decision : Dismissed

Judgement

Dr. Shalini Phansalkar Joshi, J.—The appellant, who stands convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs. 500/- in default to suffer rigorous imprisonment for 15 days, by judgment and order dated 29.3.2008, in Sessions Case No. 342 of 2006, of Additional Sessions Judge, Pune, by this appeal, challenges his conviction and sentence.

2. Brief facts, as are necessary for deciding this appeal, can be stated as follows:--

"P. W. 2 Nasir Khan is running Maharashtra Scrap Centre at Chandanwadi, Pune. In the year 2006, the appellant, deceased Bablu and P.W.5 Raju Rajput, were working in his shop. On 4.4.2006 at about 6.45 a.m., the appellant came to his house and confessed to him that he has committed serious mistake. On enquiries, as to which mistake he has committed, the appellant informed him that there was quarrel between him and the deceased Bablu on that night at about 12.30, on the issue of who will cook the food and in the said quarrel, he had cut the throat of the deceased with knife and assaulted the deceased with

stone on his head. The appellant requested P.W.2 Nasir to save him or to give some money so that he can go to his native place. P.W.2 Nasir, assured to save him and made him wait at his house. Then without the knowledge of appellant P.W.2 Nasir went to Shiv Rana Pratap Police Chowky and gave information of whatever the appellant has confessed before him. The police accompanied him to his house and then alongwith the appellant they went to the scrap material shop of P.W.2 Nasir. There the appellant showed place which was near godown outside the tin shade. The dead body of Bablu was lying on the handcart which was without wheels. All of them then went to police chowky again and there complaint of P.W.2 Nasir Khan was recorded by P.W.6 PSI Naikwade vide Exh. 26."

3. On his complaint C.R. No. 138 of 2006 was registered against the appellant for the offence punishable under Section 302 of IPC. During the course of investigation, appellant was arrested on the same day. The spot panchanama Exh. 22 was made in the presence of P.W. 1 panch Bashir Khan. From the spot, blood stained stone and the piece of wooden frame with blood stains thereon were seized. After the inquest panchanama, the dead body was sent for postmortem. P. W.7 Dr. Milind Wabale of Sasson Hospital conducted autopsy on the same day and opined that the cause of death was traumatic and haemorrhage shock as a result of cut throat injury associated with blunt injury on the head. The postmortem report is produced at Exh. 52.

4. During police custody, the appellant expressed his willingness to show the place at which he has concealed the knife, his T-shirt and pant. His statement was reduced to memorandum Exh. 31 in presence of panch P.W.3 Vikrant Shinde. Thereafter the appellant guided police and panchas to the heap of plastic scrap material in the godown and therefrom he produced blood stained knife, T-shirt and pant. These articles were seized under panchanama Exh. 32. The seized articles were sent to Chemical Analyzer on 5.4.2006 vide requisition letter Exh. 47. The Chemical Analyzer's reports are produced in the case at Exh. 58 to 60. Further to completion of investigation, P.W. 6 PSI Naikwade fled chargesheet in the court against the appellant.

5. On committal of the case to the Sessions Court, trial Court framed charge against the appellant vide Exh. 5. The appellant pleaded not guilty and claimed trial raising defence of denial.

6. In support of its case, the prosecution examined in all 7 witnesses and on appreciation of their evidence, the trial Court held the guilt of the appellant to be proved and convicted and sentenced him as aforesaid.

7. This judgment of the trial Court is challenged in this appeal by learned counsel for appellant and supported by the learned APP. In our considered opinion, in order to effectively deal with the rival submissions advanced by them, it would be useful to refer to the evidence on record.

8. The only eye witness examined by prosecution to prove its case is P.W.5 Raj Rajput, who was, at the relevant time working in the shop of P.W.2 Nasir

alongwith deceased Bablu and the appellant and in whose presence the incident has happened. As per prosecution case, P.W.5 has witnessed the incident of assault at night in which the appellant has stabbed the deceased with knife and assaulted the deceased with stone on his head. This witness has, however, not supported the prosecution case. According to him, at 10.30 p.m., he left to watch movie and at that time both the deceased and appellant were in the room. He returned at 2.30 a.m. and woke up at 8.30 a.m., when he found many people gathered outside his room and further saw that deceased was lying in injured condition. Though he is declared hostile and cross-examined by learned APP, nothing worthwhile is elicited in his cross examination to prove the fact that he was also present at the time of incident and has witnessed the same.

9. As a result, the prosecution case now stands on circumstantial evidence alone. The circumstances which are relied upon by the prosecution are as follows:--

"1. Extra judicial confession made by the appellant before P.W.2 Nasir Khan.

2. Recovery of dead body at the instance of appellant.

3. Homicidal death

4. Recovery of blood stained clothes and the knife at the instance of appellant.

5. Recovery of blood stained stone from the spot."

10. The main plank of prosecution case is on the evidence of P.W.2 Nasir Khan before whom the appellant has made extra judicial-confession. As per his evidence both the appellant and the deceased were working in his shop alongwith P.W.5 Raj Rajput. On 4.4.2006, at about 6.45 a.m., the appellant came to the house and confessed to him that he has committed mistake (Maze kadun Galti Zali). When he asked him as to what was the mistake, the appellant told him that he and the deceased quarrelled on the last night and in that quarrel, he killed deceased (Maine Bablu ko khatm kiya). P.W. 2 Nasir Khan asked him as to why he did like that, thereupon the appellant told him that they quarrelled on the count of who will prepare food. As per P.W.2 Nasir Khan, he told the appellant that he would go to police station and lodge complaint against him. The appellant shown willingness and readiness for the same. Then P.W.2 Nasir went to police station and gave information.

11. As per evidence of P.W.2 Nasir, he alongwith police returned to the house. The appellant was present there. The appellant showed the place where dead body of the deceased was found lying, which was on the hand cart outside his shop. After the inquest panchanama, dead body was sent for postmortem and then P.W.2 Nasir Khan went to police station and lodged complaint against the appellant vide Exh. 26.

12. There is corresponding evidence on record to that effect of P.W.6 PSI Naikwade, who has deposed that at about 11.45 a.m. P.W.2 Nasir Khan came to police station and lodged complaint on which he registered C.R. No. 138 of 2006.

On the same day, he has carried out investigation in the crime by visiting the spot. There at the spot he found blood stained quilt, one stone, small wooden plank with blood stains thereon, which came to be seized under panchanama Exh. 22. P.W.1 Bashir Khan, who is panch to the spot panchanama, has also deposed that the blood stains were noticed on the quilt, stone and wooden plank. These three articles were also seized under panchanama.

13. Then, there is corroborating evidence of P.W.7 Dr. Milind Wable, who has conducted postmortem on the dead body of Bablu and found following injuries:--

"External injuries:--

1. Oblique lacerated wound, 4 cms above lateral angle of right eye brow 2 x 1 cm underlying bone fractured.
2. Horizontal lacerated wound, 5 cm above right ear - 1.5 x 1 cm underlying bone fractured.
3. Lacerated wound, 2 cm behind injury No. 2 measuring 2 x 0.75 cms underlying bones fractured.
4. Lacerated wound 4 cms behind injury No. 3, 3 x 1 cm bone deep.
5. Abrasion pinna of right ear 2.5 x 1.5 cms.
6. Contused abrasion, 2 cms behind right ear, 3 cms in diameter, surrounding area of 1 cm contused.
7. Abrasion, forehead 3 cms, above lateral angle at left eyebrow 4 x 3 cms.
8. Left black eye.
9. Right black eye.
10. Abrasion 1 cm below right eye 1.5 cm diameter.
11. Abrasion, 1 cm anterior to right ear 2 x 1 cms.
12. Cut throat injury at the level of thyroid, starting from 8 cms below right mastoid extending upto 6 cms below left angle of mandible, measuring 12 x 4 cms. Underlying structures including trachea, right earoid, right jugulary show clear cut injury.
13. Multiple abrasions, anterior, aspect of right shoulder size varying from 0.25 cm diameter to 1.5 x 1 cm, distributed in an area of 8 x 4cms.
14. Two linear abrasions anterior aspect of left forearm 3 cms above wrist measuring 3.5 and 2 cm long separated by a distance of 1.5 cms.
15. multiple abrasion dorsum of left hand size varying from 0.25 cm diameter to 1 cm diameter in an area of 5x3.5 cms.
16. Multiple abrasions right leg all over size varying from 0.2 cm diameter to 2

x1.5 cm. 17. Abrasion posterior aspect of right shoulder 2 x 1 cms.

Internal injuries.

1. Depressed fracture, starting from anterior half of left temporal bone, extending over both parietal and right temporal, measuring 12 x 7 cms.
2. Fracture of anterior and middle cranial foramina all bones. Extra dural haemorrhage all over brain surface, subdural haemorrhage all over brain surface, subarachnoid haemorrhage with contusion at left temporal bone 4 x 2 cm, at left frontal bone 3 x 2 cm. Laceration of i) right parietal bone 3 x 1 x 1 cms. ii) left parietal bone 4 x 1 x 1.5 cms. iii) Cerebellum 4 x 0.5 cms."

According to him, injury Nos. 1 and 12 and their corresponding internal injuries were sufficient in the ordinary course of nature to cause death individually, collectively and together with external injuries. In his opinion, the cause of death was traumatic and haemorrhage shock as a result of cut throat injury associated with blunt injury on head. In evidence before the Court, he has stated that cut throat injury is possible by knife whereas injury on head is possible with stone. His evidence, therefore, proves homicidal death of Bablu.

14. The prosecution has further relied upon evidence of P.W.3 panch Vikrant Shinde and P.W.6 PSI Naikwade, to prove that the blood stained knife and clothes of the appellant were recovered at his instance under Section 27 of the Evidence Act. The memorandum panchanama Exh. 31 and the seizure panchanama Exh. 32 to that effect are produced on record. As per evidence of P.W.6 PSI Naikwade, these articles were sent to Chemical Analyzer and as per Chemical Analyzer's report, human blood stains were found on those articles, though results of blood grouping were inconclusive.

15. As per learned APP, this circumstantial evidence is more than sufficient to establish the chain proving guilt of the appellant beyond reasonable doubt, as no other inference except that of guilt of the appellant can be drawn from it; whereas according to learned counsel for appellant, none of the circumstance is sufficiently established by prosecution and these circumstances do not lead to unerring conclusion that none else except the appellant has committed the offence.

16. The first and foremost challenge raised by learned counsel for the appellant is to the recovery of the blood stained clothes and knife at the instance of appellant under Section 27 of the Evidence Act, on the ground that at the time of giving statement and recovery of articles, appellant was hand cuffed as admitted by P.W.3 panch Vikrant Shinde. Learned counsel for the appellant has relied upon judgment of this Court in Deoraj Deju Suvarna and etc. Vs. State of Maharashtra, in which it was held that when the evidence proves that accused was hand cuffed at the time of recovery it cannot be said beyond reasonable doubt that recovery was voluntary and not as a result of duress, threat or pressure by the police authorities. In view of this clear legal position, we are also

not inclined to place reliance on the recovery evidence.

17. Learned counsel for the appellant has also challenged the spot panchanama on the ground that P.W.1 panch Bashir Khan has admitted that at the time of drawing spot panchanama, he was not present there and he also cannot state which articles were seized by the police at the time of said panchanama. He has further admitted that the police did not read over to him the contents of panchanama and he has signed on the panchanama at the instance of police. The prosecution has not disowned him despite these admissions given by him in cross-examination. Therefore, in our opinion also, his evidence is required to be excluded from consideration altogether.

18. However, in our view, the spot panchanama cannot be excluded from consideration as it is proved through the evidence of P.W.6 Investigating Officer PSI Naikwade. Though he is a police person and also Investigating Officer, there is neither any rule of law nor procedure to disbelieve evidence of police person or Investigating Officer, unless the some material is brought on record to prove that he has any reason to implicate accused falsely in the case. The presumption that the witness speaks truth on oath applies equally to police person also. Therefore, his evidence deserves to be relied upon. The presence of human blood on the articles which were seized from the spot including the stone, quilt and wooden frame, even if results of blood grouping are inconclusive, is sufficient to prove the spot and the manner in which the incident has happened.

19. The main attack of learned counsel for the appellant is on the evidence relating to extra-judicial confession. She has relied upon judgment of Apex Court in Sahadevan and another Vs. State of Tamil Nadu, & Pancho Vs. State of Haryana, to submit that extra-judicial confession is a weak piece of evidence; therefore, court must ensure that the same inspire confidence and is corroborated by other prosecution evidence. She has laid emphasis on the principles laid down in para 16 of the judgment of Sahadevan (supra) relating to evidence of extra-judicial confession. These principles are:--

"16. Upon

(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."

20. According to learned counsel for appellant, in the instant case extra-judicial confession is not getting support from the chain of circumstances and other prosecution evidence and therefore, it cannot be relied upon as a sole piece of evidence to convict the appellant.

21. Learned counsel for appellant has further relied on Supreme Court Judgment in State of A.P. Vs. E. Satyanarayana, , wherein Three Judge Bench, relying upon its earlier decisions held that:--

"The evidence in the form of extra-judicial confession made by the accused to witnesses, cannot be always termed to be tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witnesses before whom confession is made and is satisfied that the confession was true and voluntarily made, then conviction can be found on such evidence alone."

22. The Supreme Court in this decision has relied upon its earlier judgment in Narayan Singh and Others Vs. State of M.P., wherein it has cautioned that:--

"It is not open to Court trying criminal case to start with presumption that extra-judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when confession is made and the credibility of witnesses who speak for such a confession. The retraction of extra-judicial confession which is a phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession".

23. Supreme Court has in this judgment making reference to its earlier decision in Kishore Chand Vs. State of Himachal Pradesh, further cautioned that:--

"Unambiguous extra-judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise. The court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinized."

24. The Supreme Court in this judgment has relied upon its earlier decision in Madan Gopal Kakkad v. Naval Dubey (1992) 2 SCR 921 which held that:--

"Extra-judicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration".

25. This legal position is further confirmed by the Apex Court in R. Kuppusamy Vs. State Rep. by Inspector of Police, Ambeiligai, wherein it was held that:--

"Despite the inherent weakness of an extra-judicial confession as a piece of evidence, the same cannot be ignored if it is otherwise shown to be voluntary and truthful. It also cannot be termed as tainted evidence requiring corroboration. If the Court found the witness to whom confession was made to be trustworthy and that the confession was true and voluntary, a conviction can be founded on such evidence alone".

In this judgment the Supreme Court again declared that:--

"Courts cannot start with the presumption that extra-judicial confession is always suspect or a weak type of evidence but it would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak about such a confession and whether the confession is voluntary and truthful. It is eventually the satisfaction of the Court."

26. If above said criterias are applied to the evidence of extra-judicial confession made by the appellant in the present case, then in our considered opinion, it satisfies all these acid tests. The person to whom extra-judicial confession is made by the appellant is P.W.2 Nasir Khan in whose shop the appellant and the deceased were employed. There is no evidence that the appellant was having any other relative or close friends in the locality or even in the city before whom he could have made such extra-judicial confession.

27. Moreover, though P.W.2 Nasir is cross-examined at length, there is not a single suggestion, even for the sake of it, put up to him that he is not an independent witness or his credibility is under suspicion. Both the deceased and the appellant were working in his shop and hence he had no reason to state falsely either against deceased or the appellant. No material is also elicited in his cross-examination to show that he was inimically disposed against the appellant for any reason whatsoever. In such situation he is not only an independent witness but also a natural witness to whom the confession could have been made by the appellant. There is also nothing in his cross-examination to show that he has advanced any inducement or promise to the appellant for making such confession. Appellant has come to his house in the early morning of his own accord which proves voluntariness. This witness is also trustworthy as immediately after the confession was made by the appellant, he has given information to police and subsequently lodged complaint also.

28. Though it is argued that the confession is made at a delayed time and hence it should be disbelieved, the evidence on record goes to prove that the incident has taken place after midnight and immediately in the early morning at 6.45 a.m. itself the appellant has gone to the house of P.W.2 and gave confession. Therefore, it cannot be said that it is marred with delay as at the earliest opportunity such confession is made.

29. Thus, the confession is proved to be true and voluntary. The credibility and impartiality of P.W.2 Nasir before whom confession is made is also not challenged in any way. Therefore, we are satisfied that the extra-judicial confession in the present case deserves to be accepted to place implicit reliance thereon.

30. It is also not the case that this extra-judicial confession is not getting support from any other source. It is corroborated by the recovery of dead body and most importantly from medical evidence which shows homicidal death of Bablu, that too in the manner like cut throat injury with sharp edged weapon and injuries on head with blunt object. Therefore, in our considered opinion, the extra-judicial confession alone can form the sole basis for conviction of the appellant.

31. The last argument advanced by learned counsel for appellant pertains to delay in lodging of F.I.R. She has relied on State of A.P. Vs. E. Satyanarayana, to submit that where Investigating Officer deliberately failed to record F.I.R. on receipt of information of cognizable offence and First Information Report is prepared after reaching the spot, after due deliberations, consultation and discussion, such investigation cannot be relied upon.

32. However, on appreciation of evidence on record, in this case, we do not find that there is any delay as such in registering F.I.R. Initially P.W.2 Nasir Khan has given only information to the police about extra-judicial confession made by the appellant. The said information was verified by visiting the spot where the dead body was found and thereafter again the police, P.W.2 Nasir and the appellant came to the police station and then complaint was recorded at 11.45 a.m. Thereafter, the offence came to be registered at about 12.30 p.m. The spot panchanama is made subsequent to registration of F.I.R. in between 1 to 2.00 p.m. In the spot panchanama Exh. 22, C.R. No. 138 of 2006 is also found mentioned. There is also no evidence on record to show that there were any deliberations, consultation and discussion before registration of the offence as nothing is brought on record to prove that P.W.2 Nasir Khan, who has lodged complaint and P.W.6 PSI Naikwade who has registered the offence, had any animus against appellant to implicate him falsely in the case.

33. To sum up, therefore, we have no hesitation in holding that as the evidence relating to extra-judicial confession is found in the present case to be completely reliable, trustworthy and credible, to the satisfaction of this Court and as it is also supported with other corroborative circumstances and evidence on record, the prosecution has succeeded in bringing home the guilt of the appellant.

34. Consequently, the conviction of the appellant, as recorded by the trial Court for the offence punishable under Section 302 of the Indian penal Code is upheld and confirmed. The appeal stands dismissed.