

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1696 OF 2005

BINOD MAHATO

..... APPELLANT

VERSUS

STATE OF WEST BENGAL

... RESPONDENT

ORDER

1. This appeal is directed against the judgment and order of conviction and sentence passed by the trial Court and affirmed by the High Court. The appellant, being aggrieved by the aforesaid judgment and order of conviction and sentence passed against him directing him to suffer imprisonment for life, has preferred this appeal in which we have heard the learned counsel appearing for the parties.
2. Counsel for the appellant has very forcefully argued before us that the extra-judicial confession on which reliance has been placed by the Courts below could not have been made the sole basis of conviction of the appellant particularly when the same was shown to have been made to a gathering and not individually to each of the witnesses and also because all the said witnesses had not been examined. Counsel has submitted that there was some doubt created in the prosecution case and, therefore, the same should have been disbelieved by the Courts below and the appellant should have been acquitted. The aforesaid submissions made by the counsel appearing for the appellant have been refuted

by the counsel appearing for the respondent.

3. At this point, we wish to bring out the law relating to extra-judicial confession by referring to a judgment of this Court in State of U.P. v. M.K. Anthony reported in (1985) 1 SCC 505 at para 15 extracted hereinbelow: -

“15.....It thus appears that extrajudicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extrajudicial confession comes from the mouth of witness/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 for 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, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extrajudicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extrajudicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon.”

4. In order to appreciate the rival contentions of the parties, we have perused the evidence adduced in the case by the prosecution witnesses. The First Information Report was filed by PW-1, the informant, who had also stated about the extra-judicial confession made by the appellant herein. The said extra-judicial confession was made in the presence of a number of villagers, some of whom have been examined and they have corroborated each other on all material particulars.
5. There is another very vital factor which corroborates the extra-judicial confession made by the appellant and that is the theory of the last seen together. It has been

established in evidence by the prosecution witnesses that in that particular house and on the particular date and material time only the deceased and the accused were present as the other occupants of the house had gone to witness some singing programme. Since both the accused and deceased were present in the said house all alone and since the deceased was found dead immediately upon return of the other occupants of the house, it was the accused who was to give an explanation as to how the deceased had died. He has failed to explain the circumstances in his statement under Section 313 of the Code of Criminal Procedure. He has failed to explain the manner in which the deceased had died. The deceased was found with marks of strangulation. The extra-judicial confession made by the appellant to the prosecution witnesses corroborates the case of the prosecution. So far as the motive behind the murder is concerned, the same is also established by the very fact that the deceased who was the mother in law of accused was always fighting with the daughter of the accused and, therefore, that was the reason for which the murder was committed.

6. In this view of the matter, we find no merit in this appeal. The same is dismissed.

7. Fees of the Amicus is fixed at Rs. 5,000/-

.....J
[DR. MUKUNDAKAM SHARMA]

.....J
[C.K. PRASAD]

NEW DELHI
MARCH 30, 2010.