



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1635 OF 2018

RATNU YADAV

...APPELLANT

VERSUS

THE STATE OF CHHATTISGARH

...RESPONDENT

J U D G M E N T

ABHAY S. OKA, J.

1. The Sessions Court convicted the appellant-accused for the offence punishable under Section 302 of the Indian Penal Code (for short, 'IPC') for committing the murder of Smt Hemwati Bai, who was his stepmother. Appellant was sentenced to undergo life imprisonment. By the impugned judgment, the High Court has dismissed the appeal preferred by the appellant.

FACTUAL ASPECT

2. The case of the prosecution in brief is that the appellant had a land dispute with the deceased. The allegation against

the appellant is that on 2nd March 2013, he assaulted the deceased. After that, he caught hold of the deceased by her hair and dragged her up to the village pond. The appellant put her head inside the pond water. The deceased was suffocated to death. The first informant–Darshu, PW-4, informed the police that Hemwati Bai died due to drowning. Accordingly, a First Information Report (for short, 'FIR') was registered. After the completion of the investigation, a chargesheet was filed against the appellant. The prosecution examined ten witnesses. There is no direct evidence. The prosecution relied upon evidence of PW-1, Sukhmani Bai, the village officer. The prosecution case is that the appellant made an extra-judicial confession before the witness. The prosecution relied upon the evidence of PW-5, Chaprasi, the deceased's brother. According to PW-5, he saw the appellant holding the hair of the deceased and was taking her towards the pond. Though PW-1 was declared hostile, the Trial Court and High Court relied upon a part of her testimony. The Courts also believed the testimony of PW-5.

SUBMISSIONS

3. Shri Shridhar Y. Chitale, learned counsel appearing for the appellant as amicus curiae, has taken us through the postmortem report and testimony of relevant prosecution witnesses. Based on the evidence of PW-9, Dr Pankaj Kishore, his submission is that the death was due to drowning, and the prosecution has not discharged the burden on it to prove that it was a homicidal death. He submitted that evidence of PW-1, who was declared as hostile, cannot be believed as in the

examination-in-chief, the witness did not depose that the appellant made a confession of killing the deceased. However, in the cross-examination made by the public prosecutor, the witness purportedly stated that the appellant confessed before her about killing the deceased. He submitted that evidence of PW-1 cannot be believed. As regards the evidence of PW-5, he stated that though the witness deposed that he saw the appellant dragging the deceased towards the pond, PW-2 – Bisoha, who was allegedly present at that time, did not support the prosecution. Moreover, another witness, Lakhan, was allegedly present there and was not examined by the prosecution. He pointed out that the incident happened in the evening and PW-10, Investigating Officer admitted that there is a temple near the house of the deceased and other people lived nearby. He would, therefore, submit that the prosecution has failed to prove the appellant's guilt beyond a reasonable doubt.

4. Shri Prashant Singh, learned counsel appearing for the respondent State, submitted that in her cross-examination made by the public prosecutor, PW-1 has clearly deposed about the confessional statement made by the appellant. He submitted that evidence of a hostile witness need not be rejected in its entirety and that the Court can always rely upon a part of the testimony of such a witness. He submitted that the evidence of PW-5 proves that the appellant was last seen together with the deceased, and at that time, he was holding the deceased by her hair. He submitted that this evidence is sufficient to hold that the death of the deceased is homicidal.

He submitted that in view of the oral testimony of the said two witnesses, the appellant's guilt has been established.

CONSIDERATION OF SUBMISSIONS

5. We have carefully perused the evidence of prosecution witnesses and other documents on record. The prosecution is relying upon the extra-judicial confession made by the appellant before PW-1 and evidence of PW-5 of last seen together. The case of the prosecution is that after an altercation with the deceased in her house, the appellant held the deceased by her hair and dragged her to the village pond. The prosecution is relying upon a site map. It shows that a road separates the pond and the house of the deceased. The sketch shows the existence of a ridge around the pond and two temples on the ridge of the pond abutting the road. The temples are exactly opposite the house of the deceased. According to the prosecution case, the appellant dragged the deceased by holding her hair from her house up to the pond. Between the house of the deceased and the pond, there is a road and ridge of the pond. This means the appellant must have dragged the deceased for a considerable distance. The postmortem report records explicitly that no marks of any injury were found on the body of the deceased. In his evidence, PW-9 Dr Pankaj Kishore reiterated that there was no injury mark on the body of the deceased. If the prosecution story of the appellant dragging the deceased was true, there would have been some injury on the body of the deceased. Therefore, the absence of

any injury marks on the body militates against the prosecution's case.

6. Evidence of PW-9 shows that salt water was found in the trachea and lungs of the deceased. Perhaps to find out whether the water found in the trachea and lungs of the deceased was the water in the pond, samples of water from the pond were collected and sent to the laboratory. That is what PW-10, the Investigating Officer, has stated in paragraph 11 of his deposition. He further stated that the Director of the State Judicial Laboratory returned the samples without testing them on the ground that the cause of death was established in the postmortem notes.

7. According to PW-9, the cause of death was due to drowning; however, he was unable to state whether the death was homicidal or accidental. The reason is that it was difficult for him to state whether deceased immersed in the water herself or she was forced into water. In fact, in postmortem notes, PW-9 stated that an expert's opinion should be sought. Admittedly, an expert's opinion was not sought.

8. Now, we turn to evidence of PW-1. She was a village Kotwal. She was a signatory to the panchnama of the recovery of the dead body and a signatory to the sketch of the site made by the police. In the examination-in-chief, she stated that on the date of the incident, around 7 p.m., the appellant came to her house and stated that his mother had died. She has not deposed in her examination-in-chief that the appellant stated

that he had killed the deceased. A Statement under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') of the witness was recorded by the police. Obviously, as the said witness made a departure from what she had stated in the police statement, at the instance of the public prosecutor, the witness was declared hostile. The cross-examination of the witness by the public prosecutor shows that the witness was not confronted by showing the relevant part of her statement recorded under Section 161 of CrPC. The witness ought to have been confronted with her prior statement in accordance with Section 145 of the Indian Evidence Act. However, in the cross-examination made by the public prosecutor, the witness accepted the suggestion given by the public prosecutor that the appellant came to her house at 7 p.m. on the date of the incident and told her that he had killed his stepmother by putting her head into the village pond.

9. As regards the evidentiary value of an extra-judicial confession, a bench of three Hon'ble Judges of this Court in the case of *Devi Lal v. State of Rajasthan*¹, in Paragraph 11, this Court held thus:

“11. It is true that an extra-judicial confession is used against its maker but as a matter of caution, advisable for the court to look for a corroboration with the other evidence on record. In Gopal Sah v. State of Bihar [Gopal Sah v. State of Bihar, (2008) 17 SCC 128 : (2010) 4 SCC (Cri) 466] , this Court while dealing with extra-

¹ (2019) 19 SCC 447

judicial confession held that extra-judicial confession is, on the face of it, a weak evidence and the Court is reluctant, in the absence of a chain of cogent circumstances, to rely on it, for the purpose of recording a conviction. In the instant case, it may be noticed that there are no additional cogent circumstances on record to rely on it. At the same time, Shambhu Singh (PW 3), while recording his statement under Section 164 CrPC, has not made such statement of extra-judicial confession (Ext. D-5) made by accused Babu Lal. In addition, no other circumstances are on record to support it.”

(emphasis added)

In paragraph 16 of the decision of this Court in the case of ***Nikhil Chandra Mondal v. State of West Bengal***², this Court held thus:

“16. It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been 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. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the

² (2023) 6 SCC 605

very nature of things, it is a weak piece of evidence.”

(emphasis added)

10. The normal rule of human conduct is that if a person wants to confess to the crime committed by him, he will do so before the person in whom he has implicit faith. It is not the case of the prosecution that the appellant had a close acquaintance with PW-1 for a certain length of time before the incident. Moreover, the version of the witness in examination-in-chief and cross-examination is entirely different. Therefore, in our considered view the testimony of PW-1 is not reliable. Hence, the case of extra-judicial confession cannot be accepted.

11. Now, we come to the testimony of PW-5. At the beginning of his examination-in-chief, he stated that the deceased was his elder sister. He stated that there was an altercation between the deceased and the appellant in her house. Thereafter, the appellant caught hold of the deceased by her hair, and he slammed her. At that time, PW-2, Bisoha was present. The witness further stated that by holding his mother's hair, the appellant took her towards the pond. At that time, one Lakhan came there and tried to tell the appellant that he should not do such acts with his mother. The appellant abused him and forced him to leave. It is pertinent to note that PW-2 Bisoha did not support the prosecution and was declared hostile. More importantly, Lakhan, who has allegedly seen the appellant

dragging the deceased with her hair, has not been examined as a witness.

12. As admitted by PW-10, Investigating Officer, there is a temple near the deceased's house, and other people live nearby. The incident happened in the evening before 7 p.m. There were two temples on the ridge of the pond. Obviously, there must be many people around the place of the incident. None of them has been examined as a witness. Moreover, the officer stated that it was not revealed during the investigation that the deceased shouted. An adverse inference must be drawn against the prosecution for not examining material witnesses, including Lakhan. Considering the evidence of PW-5, Lakhan was a very crucial witness. The prosecution has not explained his non-examination. PW-2, Bisoha has not supported the prosecution. Moreover, in the absence of injuries on the body of the deceased, it is very difficult to accept the testimony of PW-5 that by holding the hair of his mother, the appellant dragged her to the pond. Therefore, evidence of PW-5 of last seen together is not worthy of acceptance.

13. Considering what we have held earlier, the appellant's guilt was not proved beyond a reasonable doubt. The appellant was incarcerated for 11 years.

14. Hence, the impugned judgment and order dated 7th April 2018 and 9th July 2013 are hereby set aside. The appellant is acquitted of the offence registered with FIR No. 68 of 2013 of Police Station Kharora, district Raipur. The appellant shall be

immediately set at liberty unless his custody is required in any other case. The appeal is, accordingly, allowed.

.....J.
(Abhay S. Oka)

.....J.
(Rajesh Bindal)

**New Delhi;
July 09, 2024**