A PODYAMI SUKADA

v.

STATE OF M.P. (NOW CHHATISGARH)

(Criminal Appeal No. 1243 of 2006)

JULY 23, 2010

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[HARJIT SINGH BEDI AND CHANDRAMAULI KUMAR PRASAD, JJ.]

Penal Code, 1860 – s. 302 – Homicidal death of mother C *by son – Extra-judicial confession made by son in presence of witnesses and recovery of weapon at his instance – Conviction and sentence u/s. 302 by courts below – On appeal, held: Witnesses to the extra judicial confession declared hostile by prosecution, thus does not inspire* D *confidence – It cannot be held with certainty that any extra judicial confession in fact was made by son-accused – Conviction cannot be sustained merely on the ground of recovery of weapon of crime at the instance of accused – Thus, accused granted the benefit of doubt – Order of* E *conviction and sentence set aside.*

According to the prosecution case, the appellant caused death of his mother with a burnt stick. Thereafter, he made extra-judicial confession in the Panchayat in the presence of witnesses-PWs. 1 to 4 and the weapon of F **crime was recovered at his instance. However, the prosecution declared the said witnesses hostile. The courts below convicted the appellant u/s. 302 IPC and imposed punishment of life imprisonment. Hence the appeal.**

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Allowing the appeal, the Court

HELD: 1.1 The evidentiary value of extra judicial confession depends upon trustworthiness of the witness

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before whom confession is made. Law does not contemplate that the evidence of an extra judicial confession should in all cases be corroborated. It is not an inflexible rule that in no case conviction can be based solely on extrajudicial confession. It is basically in the realm of appreciation of evidence and a question of fact to be decided in the facts and circumstances of each case. [Para 10] [969-G-H; 970-A]

1.2 In the instant case, all the witnesses to the extra judicial confession have been declared hostile by the prosecution. It is true that the evidence of the hostile witness is not altogether wiped out and remains admissible in evidence and there is no legal bar to base conviction on the basis of the testimony of hostile witness but as a rule of prudence, the court requires corroboration by other reliable evidence. The PW 1, PW 2, PW 3 and PW 4 in their evidence had stated that the meeting was called in the village after the death of the deceased, but PW 2 and PW 4 have nowhere stated that extrajudicial confession was made by the appellant admitting that he had killed the deceased. PW 1 and PW 3 too have not stated anything about extrajudicial confession in their examination in chief but after being declared hostile and cross-examined by the prosecution they disclosed that the appellant had confessed that he killed the deceased with the burnt stick as she told him that he was wandering after consuming liquor. However, when cross-examined by the defence, again they admitted that no such confession was made by the appellant. Thus, there is complete sommersault in their evidence. The evidence of both the prosecution witnesses is slippery and from their evidence, it is difficult to hold with certainty that any extra judicial confession in fact was made by the appellant. This state of evidence leaves this Court in doubt and the witnesses of the extrajudicial confession do not inspire confidence

and merely on the ground of recovery of weapon of crime at the instance of the appellant, it would be unsafe to sustain the conviction of the appellant. The appellant is granted the benefit of doubt. The impugned judgment of conviction and sentence of the appellant is set aside. [Paras 9, 11 and 12] [969-C-F; 970-D-E; 970-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1243 of 2006.

From the Judgment and Order dated 22.06.2005 of High Court of Chhatisgarh at Bilaspur in Criminal Appeal No. 936 of 2000.

D.N. Goburdhan and P. Bagchi for the Appellant.

Atul Jha and Dharmendra Kumar Sinha for the Respondent.

The Judgment of the Court was delivered by

C.K. PRASAD, J. 1. This appeal, by grant of leave arises from the judgment and order dated 22nd June, 2005 passed by the Chhatisgarh High Court in Criminal Appeal No.936 of 2000, whereby it had upheld the conviction of the appellant under Section 302 of the Indian Penal Code and punishment of life imprisonment inflicted by Order dated 18th February 2000, passed by the First Additional Sessions Judge, Bastar in Sessions Trial No.45 of 2000.

2. According to the prosecution, on 9th December, 1999 Madvi Pali, went to the house of Madvi Mase to borrow money and when she reached there, she found her dead. She informed PW.1, Madvi Rama about the incident. Madvi Rama went to the house of Madvi Mase and found her dead with wounds at different places on the body. PW.1, Madvi Rama, according to the prosecution, convened a meeting and on enquiry, the appellant confessed in the meeting that in the night of 8th December, 1999 his mother (deceased)-Madvi Mase scolded him alleging that he wanders after consuming liquor

which enraged him and he picked up a burning wooden plank and assaulted her which caused her death. On the basis of what has been disclosed in the meeting PW.1 Madvi Rama gave report to the Police Station, Tongpal.

3. On the basis of the aforesaid information, a case under Section 302 of the Indian Penal Code was registered against the appellant. During the course of investigation inquest report of the dead body was prepared in the presence of the witnesses and the dead body sent to Primary Health Centre, Tongpal for postmortem examination. Dr. S.L. Dhangar(PW.5), a Civil Assistant Surgeon, posted at the Primary Health Centre, Tongpal conducted the postmortem examination and found a large number of burn injuries on the person of the deceased and in his opinion the death had occurred due to shock on account of burn injuries. PW.6, P.L. Nayak, the Investigating Officer of the case arrested the appellant during the course of investigation and on his statement, the wooden plank, alleged to have been used in the commission of the crime, was recovered.

4. After usual investigation, the charge-sheet was submitted under Section 302 of the Indian Penal Code and the appellant was committed to the Court of Sessions to face the trial for commission of the above said crime. Appellant abjured his guilt and claimed to be tried.

5. To bring home the charge, the prosecution has altogether examined six witnesses out of whom PW.1 Madvi Rama, PW.2 Mangdu, PW.3 Aaita and PW.4 Lekhan have been declared hostile and cross-examined by the prosecution. Besides aforesaid witnesses, prosecution has also examined P.W.5 Dr. S.L. Dhangar, the autopsy surgeon and P.W.6 P.L. Nayak, the investigating officer. The plea of the appellant is denial simplicitor and false implication but no defence witness has been examined.

6. On the basis of evidence on record the trial court came

A to the conclusion that Madvi Mase met with a homicidal death, which finding has been affirmed by the High Court in appeal. Further relying on the extrajudicial confession and recovery of the weapon of crime at the instance of the appellant the Trial Court convicted and sentenced the appellant as above and it B has been maintained by the High Court in appeal. Relevant portion of the judgment of the High Court in this regard reads as follows:

> "In view of the above, we are of the considered opinion that extrajudicial confession regarding causing death of his C mother attacking her with the teak wood plank was made by the accused before the Panchayat, this evidence of extrajudicial confession by accused before these witnesses inspire confidence of the Court as the same stands corroborated by F.I.R. Ex.P.1 Recovery of weapon D of offence as well as medical evidence also corroborates the confession. Therefore, the finding of the Trial Court convicting the accused for the offence under Section 302 is based on the legal evidence and we do not find any circumstance to differ from the view taken by the Trial E Court."

7. We have heard Mr. D.N. Goburdhan for the appellant and Mr. Atul Jha for the State. Mr. Goburdhan submits that in view of the evidence on record, the finding recorded by the F courts below that deceased met with the homicidal death, cannot legitimately be assailed. However, he submits that the witnesses to the extra judicial confession are not reliable and hence the conviction and sentence of the appellant deserve to be set aside. He points out that alleged recovery of the weapon of crime at the instance of the appellant is tainted and hence, G not enough to accept the case of the prosecution.

8. Mr. Jha, however, submits that extra judicial confession of the appellant together with the recovery of the weapon of crime at his instance conclusively establishes the guilt of the H appellant.

9. There is no eye-witness of the crime and in order to bring home the charge the prosecution has relied on the extrajudicial confession said to have been made by the appellant in the Panchayat in the presence of PWs.1 to 4 and further recovery of weapon by the Investigating Officer at his instance. Hence what needs to be considered is as to whether the extrajudicial confession said to have been made by the appellant in the presence of the witnesses deserves to be relied. As stated earlier all the witnesses to the extra judicial confession have been declared hostile by the prosecution. True, it is that the evidence of the hostile witness is not altogether wiped out and remains admissible in evidence and there is no legal bar to base conviction on the basis of the testimony of hostile witness but as a rule of prudence, the court requires corroboration by other reliable evidence. In the present case PW.1 Madvi Rama, PW.2 Mangdu, PW.3 Aaita and PW.4 Lekhan in their evidence had stated that the meeting was called in the village after the death of the deceased, but PW.2 Mangdu and PW.4 Lekhan have nowhere stated that extrajudicial confession was made by the appellant admitting that he had killed the deceased. PW.1, Madvi Rama and PW.3, Aaita too have not stated anything about extrajudicial confession in their examination in chief but after being declared hostile and cross-examined by the prosecution they disclosed that the appellant had confessed that he killed the deceased with the burnt stick as she told him that he was wandering after consuming liquor. However, when cross-examined by the defence, again they admitted that no such confession was made by the appellant. Thus there is complete sommersault in their evidence.

10. Evidentiary value of extra judicial confession depends upon trustworthiness of the witness before whom confession is made. Law does not contemplate that the evidence of an extra judicial confession should in all cases be corroborated. It is not an inflexible rule that in no case conviction can be based solely on extrajudicial confession. It is basically in the realm of appreciation of evidence and a question of fact to be decided

A in the facts and circumstances of each case.

11. In the face of the evidence aforesaid, the question falls for consideration is as to whether the conviction of the appellant is fit to be sustained only on the basis of the extrajudicial confession coupled with the recovery of weapon of crime at the instance of appellant. As stated earlier PW.2, Mangdu and PW.4, Lekhan neither in the examination-in-chief nor in the cross-examination had stated anything about the extrajudicial confession said to have been made by the appellant. PW.1, Madvi Rama and PW.3, Aaita in the examination-in-chief did not support the case of the prosecution and after being declared hostile and cross-examined by the prosecution did say about the extrajudicial confession by the appellant but again on cross-examination by the defence they admitted that no such confession was made by the appellant. Thus the evidence of both the prosecution witnesses are slippery and from their evidence, it is difficult to hold with certainty that any extra judicial confession in fact was made by the appellant. This state of evidence leaves us in doubt and we are of the opinion that the witnesses of the extrajudicial confession do not inspire confidence and merely on the ground of recovery of weapon of crime at the instance of the appellant, it shall be unsafe to sustain the conviction of the appellant. Accordingly, we grant appellant the benefit of doubt.

12. In the result, we allow the appeal, set aside the impugned judgment of conviction and sentence of the appellant. Appellant is in jail, he be released forthwith, unless required in any other case.

N.J. Appeal allowed.