2025 INSC 147

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 608 OF 2013

RAMU APPA MAHAPATAR APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA RESPONDENT(S)

J U D G M E N T

UJJAL BHUYAN, J.

This appeal by special leave is directed against the judgment and order dated 02.12.2010 passed by the High Court of Bombay at Bombay (High Court) in Criminal Appeal No. 252 of 2005 (Ramu Appa Mahapatar Vs. State of Maharashtra) whereby the High Court dismissed Criminal Appeal No. 252 of 2005 filed by the appellant.

2. Be it stated that the aforesaid criminal appeal was preferred against the judgment and order dated 15.10.2004 passed by the First Ad-hoc Additional District and Sessions Judge,

Thane (Sessions Judge) in Sessions Case No. 52 of 2004 whereby and whereunder appellant was convicted under Section 302 of the Indian Penal Code, 1861 (IPC) and sentenced to suffer rigorous imprisonment (RI) for life and to pay fine of Rs. 1,000/-, in default to suffer RI for 3 months.

3. Prosecution case in brief is that appellant lived with deceased Manda; it was a live-in relationship. Both of them were living in a chawl of PW-1 Ravinder Gopal Jadhav, who was the landlord. Appellant informed PW-1 that his wife had expired and that he was going to her parents' house at Dipchale village to inform them. Thereafter, appellant alongwith his son went to Dipchale village where appellant met the brother of the deceased, Bhagwan i.e. PW-3. Appellant told PW-3 in the presence of Shankar PW-6, Pandhari PW-5 and Chanda Bai PW-4 that there was a quarrel between him and Manda following which he had assaulted Manda who succumbed to the injuries.

3.1. Before the appellant could come back to his village Kudus alongwith the relatives of the deceased, PW-1 had already opened the door of the house which was bolted from outside. On opening of the door PW-1 noticed that Manda was lying dead with multiple bleeding injuries. Her *mangalsutra* and glass bangles

were broken; some of the household articles were strewn around on the ground. When appellant reached the place of incident alongwith the relatives of the deceased Manda, PW-1 enquired from him about the incident. At that stage, appellant told PW-1 that deceased Manda had suspected that he (appellant) was having illicit relation with some other woman. This resulted in a quarrel in the course of which appellant had assaulted Manda with the help of a grinding stone and a stick.

3.2. PW-1 then lodged First Information Report (FIR) before the police station whereafter offence under Section 302 IPC was registered against the appellant.

3.3. Investigating officer carried out the investigation in the course of which he drew inquest panchanama, spot panchanama and made seizure of various articles from the place of incident. Appellant was arrested. The weapon of assault was seized. On completion of investigation, chargesheet was filed against the appellant charging him for committing an offence punishable under Section 302 IPC.

4. Learned Sessions Judge read over and explained the charge to the appellant to which he pleaded not guilty and claimed to be tried. To prove its case, prosecution examined 10 witnesses.

It was a case of circumstantial evidence. Prosecution relied upon the extra-judicial confession of the appellant made before PW-1 Ravindra, PW-3 Bhagwan, PW-4 Chandabai and PW-6 Shankar. After considering the evidence on record, learned Sessions Judge *vide* the judgment and order dated 15.10.2004 convicted the appellant under Section 302 IPC and sentenced him to undergo RI for life and also to pay fine of Rs. 1,000/-, in default to suffer RI for another 3 months.

5. Aggrieved by the aforesaid conviction and sentence, appellant preferred appeal before the High Court being Criminal Appeal No. 252 of 2005. By the judgment and order dated 02.12.2010 (impugned judgment), High Court dismissed the appeal of the appellant. Consequently, conviction and sentence of the appellant have been affirmed.

6. This Court by order dated 21.09.2012 had issued notice in the related petition for special leave to appeal (criminal). Leave was granted *vide* the order dated 15.04.2013. Hence, the present appeal.

7. Learned counsel for the appellant has taken us to the evidence of PW-1, PW-3, PW-4 and PW-6 and submits that the extra-judicial confession allegedly made by the appellant before

the above witnesses could not be accepted as a valid piece of evidence. Extra-judicial confession itself is a weak piece of circumstantial evidence. From the testimony of the above witnesses, it is clearly evident that no credence could be given to the theory of extra-judicial confession. Such confession does not inspire any confidence. Beyond the extra-judicial confession, there was no material on record to link the appellant with the death of the deceased. Learned trial court as well as the High Court had erred in placing reliance on the so-called extra-judicial confessions and basing the conviction of the appellant on such evidence. He, therefore, submits that conviction of the appellant is wholly unsustainable and liable to be set aside. Resultantly, the appeal should be allowed.

8. *Per contra,* learned counsel for the respondent supports the impugned judgment of the High Court. According to him, there is no reason to disbelieve the evidence of PWs 1, 3, 4 and 6. Therefore, the trial court was justified in convicting the appellant on the basis of confessional statement made by the appellant before the above witnesses. High Court had rightly affirmed such conviction and sentence of the learned Sessions Judge. He submits

that there is no case for interference with the concurrent findings. Therefore, the criminal appeal is liable to be dismissed.

9. Submissions made by learned counsel for the parties have received the due consideration of the Court.

10. PW-1 is the informant Ravindra; he is the owner of the chawl in which accused used to stay as the tenant alongwith his 'wife' and son. On 21.03.2003 at about 06:15 AM, accused came to the residence of PW-1 alongwith his son and informed PW-1 that his wife had expired. Thereafter, the accused went to the house of the parents of his wife to call her relatives. PW-1 stated that he had gone to the house of the accused alongwith his brother and found that it was bolted from outside. Alongwith his brother Shyam Rao Gopal Jadhav, PW-1 opened the door and saw that wife of the accused was lying dead on the floor in a pool of blood.

10.1. Accused brought the brother of the deceased and 4/5 persons. They also saw the dead body. At that stage, PW-1 and his brother enquired with the accused who told them that he had assaulted the deceased with a grinding stone.

10.2. According to PW-1, he went to the police station and lodged the first information which he proved in the court alongwith its contents.

10.3. In cross-examination, he stated that the accused had only told him that his wife had expired. He had talked with the accused for about five minutes. Accused told him that he was going to call her relatives.

10.4. PW-1 denied the suggestion that accused was in a confused state of mind. He stated that he did not feel it necessary to inform the police immediately. He lodged the information between 12 noon to 12:15 PM. He also denied the suggestion that the accused had told him that some people had come in the night and had assaulted him and his wife whereafter they ran away. He further denied the suggestion that accused had told him that somebody had killed his wife and had also assaulted him.

11. PW-3 is Bhagwan. He is the brother of the deceased Manda. On 21.09.2003 at 07:30 AM, he was sitting alongwith Maruti, Pandu Ram Thorat and Shankar Rama Bhoye in front of his house. At that time, accused came alongwith his son Kiran. He told them that there was a quarrel between him and deceased Manda because of which he had assaulted Manda. As a result of

the injuries sustained, she died. Hearing this, PW-3 alongwith Maruti, Pandu Ram Thorat and Shankar Rama Bhoye went with the accused to his village.

11.1. When they reached the house of the accused, they found that the landlord (PW-1) was present there. They saw Manda lying dead in a pool of blood. She had injuries on her head, forehead and face. Her saree was soaked in blood and food was strewn around. Accused told them that he had assaulted the deceased with a grinding stone and a wooden stick. Thereafter, they alongwith the landlord (PW-1) went to the police station.

11.2. In his cross-examination, he stated that the accused and the deceased were not married but were staying together. The deceased used to complain to him that accused was beating her.

11.3. Accused told PW-3 and the others that Manda had expired whereupon he was asked as to how she had expired. Though Manda was the younger sister of PW-3, he did not ask the accused whether any complaint was lodged with the police. Maruti Thorat and Pandu Ram Thorat, who are the maternal uncles of PW-3, were present when PW-3 made enquiries with the accused. He had told his maternal uncles Maruti and Pandu Ram to handover the accused to the police.

11.4. PW-3 denied the suggestion that he was not sure as to whether the accused was speaking lies. Since he was to verify as to whether Manda had died, therefore they did not handover the accused to the police. PW-3 clearly stated that when the accused came, he was in a confused state of mind and he did not take tea. His clothes were not torn or blood stained. Accused had brought one mini door rickshaw and in that, PW-3 and the others went to his house. According to PW-3, he had stated before the police that accused had told him that he had assaulted Manda with a grinding stone and had killed her but did not know why it was not written.

11.5. PW-3 stated that they reached the house of the accused around 10:00 AM and thereafter they alongwith the landlord went to the police station to lodge complaint. He denied the suggestion that the accused had never told him about his quarrel with his wife and that he had assaulted her because of which she died. He also denied the suggestion that accused had told him that in the night, some thieves had come and that they had assaulted him and Manda.

12. Chandabai is PW-4. She is the wife of PW-3. According to her, on 21.09.2003 in the morning, her husband was chatting with Shankar, Maruti and Pandu Ram. Meanwhile, the accused

came there alongwith his son Kiran and told them that he had quarrelled with Manda because of which he had assaulted her and she died. Leaving behind his son Kiran with PW-4, accused alongwith husband of PW-4 i.e. PW-3 and others went to Kudus i.e. the village of the accused.

12.1. In her cross-examination, she stated that she was residing alongwith her husband PW-3, their three children and now with Kiran, son of the accused. On the day of the incident, her husband PW-3 was sitting outside their home after his breakfast. She stated that she did not directly talk with the accused but came to know about the incident. She denied the suggestion that she only came to know about the incident when her husband PW-3 told her that Manda was assaulted. She denied the suggestion that accused had told her that on that fateful night, 3/4 persons entered their house and had assaulted Manda when the accused ran away alongwith his son from the house. She further denied the suggestion that in the morning, accused had come and found that Manda had died and therefore he informed the landlord and thereafter to PW-4 and others.

12.2. She denied the suggestion that the accused also had injuries and that his clothes were torn.

13. PW-6 Shankar was sitting on the steps of the house of Bhagwan i.e. PW-3 in the morning of 21.09.2003 alongwith Bhagwan, Maruti and Pandu Ram. Accused came there at about 07:30 AM. He had come in a rickshaw alongwith his son. Accused told Bhagwan that he had quarrelled with Manda during which he had assaulted her and that she had died.

13.1. PW-6 stated that son of the accused was kept with the wife of Bhagwan whereafter they all went to the residence of the accused at Kudus. In the house of the accused, they saw that Manda had already expired. She had injuries on her forehead, head and back. They also saw that bangles and *mangal sutra* were broken and that there was splattering of blood.

13.2. In his cross-examination, he stated that accused was with them for about half an hour to 45 minutes. He did not know the accused prior to that date. He denied the suggestion that the clothes of the accused were torn and that the accused was in a confused state of mind.

13.3. PW-6 further deposed that he had told the police that accused had told Bhagwan in their presence that he had a quarrel with Manda in the night but he did not know why it was not written

that accused had told so to Bhagwan in his statement by the police.

13.4. PW-6 denied the suggestion that the accused had told them that in the night, 3/4 drunk persons had entered their house whereafter they had assaulted him and when they were about to assault his son, he ran away with his son.

14. The above four are the witnesses who had deposed that the accused had stated before the informant (PW-1) and PW-3 that he had a quarrel with Manda because of which he assaulted her with a grinding stone and a stick following which she died. There is no dispute about the multiple injuries seen on the body of the deceased or the homicidal nature of the death of the deceased. Question for consideration is whether on the strength of the evidence of the above four witnesses, the accused can be linked with the offence and as to whether it can be said that the charge against the accused of committing murder of the deceased stood conclusively proved beyond all reasonable doubt?

15. Before we analyse the evidence of the above witnesses, it is necessary to briefly examine the law relating to extra-judicial confession as the present is a case of extra-judicial confession

allegedly made by the accused before PW-1 and PW-3 which were endorsed by PW-4 and PW-6.

16. Extra-judicial confession of an offence made by the accused before a witness is one of the several instances of circumstantial evidence; there are other circumstances, such as, the theory of last seen together; conduct of the accused before or immediately after the incident; human blood being found on the clothes or person of the accused which matches with that of the accused; leading to discovery, recovery of weapon etc. As we know, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together, they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. The chain must be complete and each fact forming part of the chain must be proved. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances would not only have to be proved beyond reasonable doubt, those would also have

to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. All these circumstances should be complete and there should be no gap left in the chain of evidence. The proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. The circumstances taken cumulatively must be so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. While there is no doubt that conviction can be based solely on circumstantial evidence but great care must be taken in evaluating circumstantial evidence. If the evidence relied upon is reasonably capable of two inferences, the one in favour of the accused must be accepted.

17. In *State of Rajasthan Vs. Raja Ram*[1], this Court explained the concept of extra-judicial confession. Confession may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a magistrate or a court. Extra-judicial confessions are

[1] (2003) 8 SCC 180

generally those that are made by a party before a private individual who may be a judicial officer also in his private capacity. As to extra-judicial confessions, two questions arise: firstly, whether they are made voluntarily and secondly, are they true? If the court is of the opinion that the confession was not made voluntarily but was a result of an inducement, threat or promise, it would not be acted upon. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind and if it is not caused by any inducement, threat or promise having reference to the charge against him proceeding from a person in authority. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case judged in the light of Section 24 of the Indian Evidence Act, 1872 (briefly 'the Evidence Act' hereinafter). The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary. At that stage, the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity and voluntariness of the confession, the court may refuse to act upon the confession even if it is admissible in evidence. The question whether a confession is voluntary or not is always a question of

fact. A free and voluntary confession is deserving of the highest credit because it is presumed to flow from the highest sense of guilt.

17.1. 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 reliability of the witness to whom it is made and who gives the evidence. Extra-judicial confession can be relied upon and conviction can be based thereon if the evidence about the confession comes from a witness 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 by the witness should be clear, unambiguous and unmistakenly convey that the accused is the perpetrator of the crime and that 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.

17.2. If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration is a matter of prudence and not an invariable rule of law.

18. In *Sansar Chand Vs. State of Rajasthan*[2], this Court accepted the admissibility of extra-judicial confession and held that there is no absolute rule that an extra-judicial confession can never be the basis of a conviction although ordinarily an extra-judicial confession should be corroborated by some other material.

19. Evidentiary value of an extra-judicial confession was again examined in detail by this Court in *Sahadevan Vs. State of Tamil Nadu*[3]. That was also a case where conviction was based on extra-judicial confession. This Court held that in a case based on circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. That apart, in a case of circumstantial evidence where the prosecution relies upon an extra-judicial confession, the court has to examine the same with

[2] (2010) 10 SCC 604
[3] (2012) 6 SCC 403

a greater degree of care and caution. An extra-judicial confession, if voluntary and true and made in a fit state of mind can be relied upon by the court. However, 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.

19.1. This Court acknowledged that extra-judicial confession is a weak piece of evidence. Wherever the court intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent, such evidence should not be considered. This Court held as follows:-

> **14.** It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the

court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

19.2. Upon an indepth analysis of judicial precedents, this Court in *Sahadevan* (supra) summed up the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused:

(*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. Having surveyed the principles governing the acceptability and evidentiary value of an extra-judicial confession, we may now advert to such confession made by the accused before PW-1, PW-3, PW-4 and PW-6. It is on record that PW-3 in his cross-

examination was quite categorical in deposing that he found the accused to be in a confused state of mind. This factum has also come on record in the testimony of the other witnesses before whom such confession was made. In other words, the accused was not in a fit state of mind when he made the extra-judicial confession before PW-3. That apart, there were no blood stains on the clothes worn by the accused; not to speak of any such blood samples matching with the blood of the deceased. While various articles were seized from the place of occurrence, there was no recovery of any blood-stained clothes. There is no evidence on record that the grinding stone was recovered or that there were any blood stains on the recovered stick, not to speak of such blood stains matching the blood of the deceased. Moreover, we find the conduct of the accused to be quite strange; instead of confessing his guilt before the police or any other authority, he first goes to PW-1, the landlord, and tells him about the death of Manda; further telling him that he was on his way to the residence of the brother of Manda (PW-3) to inform him about the development. He goes to the residence of PW-3 alongwith his son in a rickshaw and tells PW-3 about the death of Manda following assault on her by him. This he stated to PW-3 before PW-4 and PW-6. What is more

strange is the reaction or non-reaction of PW-3 when the accused confessed before him that he had killed his sister Manda. This is not at all a normal behaviour of a brother. He would have certainly reacted strongly when he heard the accused saying that he had killed his sister. Instead of any such reaction, as per the prosecution case, PW-3 accompanied the accused back to his residence. Further, PW-4 stated in her cross-examination that she did not talk with the accused directly but came to know about the incident. This clearly puts her testimony under a cloud.

21. There is one more aspect which we would like to flag off. From the evidence on record, we find that there is a clear material omission in the cross-examination of PW-3. According to the testimony of PW-3, he had stated before the police that the accused had told him that he had assaulted Manda with a grinding stone and had killed her but the same was not recorded by the police in his statement under Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C.). Similarly, PW-6 in his deposition stated that he had told the police that the accused had told Bhagwan (PW-3) in his presence that he had a quarrel with Manda in the night but the police did not record in his statement under Section 161 Cr.P.C.

22. From the above, it is evident that not only the extra-judicial confession of the accused lacks credibility as PW-3 is clearly on record stating that the accused was in a confused state of mind when he confessed before him, the testimonies of PW-3 and PW-6 suffer from material omission. Their statements made under Section 161 Cr.P.C. are at variance with their evidence in court regarding the confession made by the accused before PW-3. This Court in *Alauddin Vs. State of Assam*[4] explained the context in which an omission occurs and when such an omission amounts to a contradiction. In the light of the Explanation to Section 162 of the Cr.P.C., this Court held as follows:

> **7.** When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the court which is inconsistent with what he has stated in his statement recorded by the police, there is a contradiction. When a prosecution witness whose statement under Section 161(1) or Section 164 of CrPC has been recorded states factual aspects before the court which he has not stated in his prior statement recorded under Section 161(1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the police, which he states before the court in his

[4] (2024) SCC Online SC 760

> evidence. The Explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the Explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

23. As observed above, the testimony of the prosecution witnesses suffers from serious lack of credibility and also hit by contradictions which strike at the very root of the prosecution case. No corroborating circumstances have been brought on record by the prosecution.

24. No doubt there is a strong suspicion against the appellant and the needle of suspicion *qua* the death of Manda points towards him but as is the settled jurisprudence of this country, suspicion howsoever strong cannot take the place of hard evidence. The evidence on the basis of which the prosecution seeks conviction of the accused i.e. extra-judicial confession made before the above witnesses lack credibility and hence cannot be relied upon. Besides, the evidence suffers from material contradiction. Therefore, it would be wholly unsafe to sustain the conviction of

the appellant based on such weak circumstantial evidence which on the top of it lack credibility.

25. For the aforesaid reasons, we are of the view that the appellant must get the benefit of doubt. In view of the above, the conviction and sentence of the appellant *vide* the judgment and order dated 15.10.2004 passed by the Sessions Judge in Sessions Case No. 52 of 2004 as affirmed by the High Court *vide* the judgment and order dated 02.12.2010 passed in Criminal Appeal No. 252 of 2005, are hereby set aside and quashed. Since the appellant is in detention, he shall be released from custody forthwith if not required in any other case.

26. Criminal appeal is accordingly allowed.

.....J
[ABHAY S. OKA]

.....J
[UJJAL BHUYAN]

NEW DELHI;
February 04, 2025.