

Neutral Citation No. - 2024:AHC:135178-DB

Court No. - 43

Case :- CRIMINAL APPEAL No. - 4168 of 2019

Appellant :- Kishan Pratap Singh

Respondent :- State of U.P.

Counsel for Appellant :- Akhilesh Kumar Mishra, Birendra Singh, Kamlesh Kumar Tripathi, Lal Mani Singh, Ulajhan Singh Bind

Counsel for Respondent :- G.A.

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Dr. Gautam Chowdhary, J.

(Per: Hon'ble Ashwani Kumar Mishra, J.)

1. This criminal appeal is preferred by the accused appellant Kishan Pratap Singh challenging the judgment and order dated 17.04.2019, passed by the Sessions Judge, Kannauj in Sessions Trial No.20 of 2011 (State of U.P. Vs. Kishan Pratap Singh), arising out of Case Crime No. 449 of 2010, under Section 302 IPC, Police Station–Tirva, District–Kannauj, whereby he has been sentenced to life imprisonment along with fine of Rs.20,000/- and in default of payment of fine to undergo six months rigorous imprisonment.

2. Informant in the present case is the husband of the deceased who gave a written report (Ex.Ka-1) on 05.10.2010 stating that he was in his general merchandise shop at the Plaza Market in Tirva. He received a phone call from his brother (accused appellant) that his children are weeping at the house and that he (informant) should go and enquire as to what is the matter. After closing the shop, informant came to his house at 10:15 p.m. and

found the doors of his house open. Dead body of his wife was lying on the floor and her clothes were lying helter-skelter. Upon inquiry he found his wife dead. Apprehension was expressed by the informant that due to enmity on account of a dispute relating to chabutra (platform) his wife may have been done to death by Anoop Singh and Deepu Singh. With these allegations the first information report came to be lodged under Section 302 I.P.C. as Case Crime No.449 of 2010. Anoop Singh and Deepu Singh were the persons shown as accused in the FIR registered at 23:30 p.m. on the date of incident i.e. 05.10.2010.

3. Investigation proceeded in the matter and the inquest started at 1:00 a.m. on 06.10.2010. The inquest witnesses include the accused appellant Kishan Pratap Singh along with others. The inquest witness opined that the death was homicidal and that postmortem be conducted to ascertain the cause of death. The body was sealed and sent to mortuary for conducting postmortem. The postmortem was conducted on 06.10.2010 at 12:30 p.m. wherein following injuries were found on the deceased:

“1-Abraded contusion 3 cm X 1-1/2 cm below the angle of the mandibular bone.

2- Abraded contusion 0.5 cm X 0.5 cm and is below injury no. 1.

3-Abraded contusion 0.5 cm X 0.5cm below Injury No. 2.

4- Abraded contusion 2 cm X 1 cm on left side of neck, 5 cm below the right ear.

5- Abraded contusion 1.5 cm X 1 cm just below right angle of mandibule.

6- Abraded contusion 1 cm X 0.5 cm medial to injury no. 5.

7- Abraded contusion 2 cm X 1 cm lateral to injury no. 5 .

8-Abraded contusion 1 cm X 1 cm on left elbow joint posterior aspect.

9- Abrasion 2 cm X 2 cm medial aspect of left hand, 4 cm below base of little finger.

10- Abrasion 1 cm X 1 cm and is 2 cm lateral to injury no.9.“

The cause of death was ascertained as asphyxia as a result of throttling.

4. While investigation was pending in the matter, a second report was made by the informant on 25th of November, 2010 stating that accused appellant Kishan Pratap Singh came to him and confessed that he attempted rape on the deceased and later throttled her to death. In the attempt to commit rape several injuries were caused to the deceased and since he apprehended that the deceased will lodge a complaint about the incident to the informant, as such he had no option but to throttle the deceased, whereafter he fled. This extra judicial confession made by accused to the informant in the presence of P.W.-4 and P.W.-6 forms the basis of the second report dated 25.11.2010, which is exhibited during trial as Ex. Ka-3. The Investigating Officer relying upon this extra judicial confession expunged the name of Anoop Singh and Deepu Singh from the category of accused persons vide Parcha No.6, and submitted charge sheet under Section 302 I.P.C. against the accused appellant on 02.12.2010. The Magistrate took cognizance of charge sheet and committed the case to the court of Session at Kannauj where the case got registered as Sessions Trial No.20 of 2011. The accused appellant was charged of offence under Section 302 I.P.C., which the accused denied and demanded trial.

5. During the course of trial following documentary evidences have been produced:-

"i. F.I.R., Ex.Ka.11, dt. 05.10.2010.

- ii. Written Report, Ex.Ka.1, dt. 05.10.2010.*
- iii. Application, Ex.Ka.3, dt. 25.11.2010.*
- iv. Recovery Memo of pieces of bangle, Ex.Ka.7, dt. 06.10.2010.*
- v. P.M. Report, Ex.Ka.4, dt. 06.10.2010.*
- vi. Panchayatnama, Ex.Ka.2, dt. 06.10.2010.*
- vii. Charge-sheet, Ex.Ka.6, dt. 02.12.2010.*
- viii. Charge framed by Sessions Judge, dt. 17.02.2012.*
- ix. Note framed by Sessions Judge, dt. 17.02.2012."*

6. Informant has been produced in evidence as P.W.-1 during trial. He has supported the prosecution case. He has verified both the reports made by him and has stated that the accused appellant confessed his guilt before him on 25.11.2010. During cross examination, the informant has admitted that soon after the murder of the deceased he re-married and is now living with his second wife. He has denied the suggestion that only to solemnize the second marriage he had himself killed his earlier wife (deceased).

7. Dr. Sunil Katyal, who has conducted the postmortem has been produced as P.W.-2. He has proved the postmortem report as per which the hyoid bone of the deceased was fractured and the cause of death was throttling.

8. P.W.-3 Vansh Pratap Singh is the three year old son of the deceased, who was about nine years of age when his statement was recorded during trial. P.W.-3 has supported the prosecution case according to which his mother was done to death by the accused uncle and that he saw the accused throttling his mother. The accused thereafter fled from the house. He has further stated that on the arrival of Police he had informed the I.O. that it was his uncle who

had committed the murder of his mother. The police personnel however never met him thereafter and it was for the first time in court that he has specifically implicated the accused appellant. He clarified that within a month of the death of his own mother his second mother had arrived, who loves him.

9. P.W.-4 is Ashish Singh Chauhan, who allegedly was the person before whom extra judicial confession was made by the accused before P.W.-1. In the cross-examination P.W.-4 has however not supported the prosecution case and has stated that his signature were obtained on blank pages by the Police.

10. P.W.-5 is Smt. Yuvraj Kumari. She is the mother of the accused appellant and the informant. She has not supported the prosecution case and is declared hostile.

11. P.W.-6 is Saurabh Singh, who is the brother of the deceased and the second witness of extra judicial confession of the accused. He too has not supported the prosecution case and has been declared hostile.

12. P.W.-7 is the retired Circle Officer Rajendra Dhar Dwivedi, who conducted the investigation in the matter. According to him, he recorded the statement of the informant on 06.10.2010. He also claims that additional Parcha No.1-A was issued by him during the course of investigation on 06.10.2010 itself. He has explained the steps taken by him during the course of investigation. The testimony of P.W.-7 shall be referred to a little later, when

the fairness of investigation is examined by us.

13. P.W.-8 is Sub-Inspector Virendra Kumar. He is the Officer who conducted inquest and has proved the police papers.

14. The above materials produced during trial have been confronted to the accused, who has stated that he has been falsely implicated. In reply to question no.12, accused has stated that the informant solemnized second marriage with Smt. Sangita and that he had an affair with her during life time of deceased. He further stated that the Police started suspecting the informant of murdering his own wife whereafter the informant, in collusion with the Police, has falsely implicated him. The defence has also adduced testimony of Arvind Singh as D.W.-1. He is the other brother of the informant and the accused appellant. He has alleged that the informant had an affair with one Sangita and on account of his extra marital affair quarrel used to occur between the deceased and the informant. D.W.-1 claims that he used to mediate to resolve their differences. He has stated that informant married Sangita just after a month of the murder of his wife. He has asserted that accused appellant has no concern with the incident and has been falsely implicated by the informant.

15. The court of Session on the basis of evidence led in the matter has convicted the accused appellant for the aforesaid offence, aggrieved by which accused appellant has preferred the present appeal.

16. Learned counsel for the appellant submits that the prosecution evidence is not reliable particularly the extra judicial confession, which is absolutely concocted. Learned counsel further contends that this is a case in which the accused appellant has been falsely implicated by his own brother, after killing his wife so as to marry the lady with whom he was having an affair and to achieve his mischievous design he has manipulated evidence in connivance with the Police and falsely implicated the accused appellant. Learned counsel also urged that the testimony of P.W.-3 is wholly unbelievable inasmuch as if this witness had actually seen the incident in the manner claimed by him and informed his father and the Police there exists no reason for the prosecution to wait for almost 50 days to implicate the accused appellant in the matter. It is also contended that the version of extra judicial confession is a well thought out excuse invented by the informant in collusion with the Investigating Officer.

17. Learned A.G.A., on the other hand, submits that the evidence on record has been correctly appreciated by the court of Session and the conviction of the accused appellant requires no interference.

18. We have heard Shri Kamlesh Kumar Tripathi, learned counsel for the appellant and Shri Pankaj Kumar Tripathi, learned A.G.A. for the State and have perused the materials on record.

19. The first version of the incident is based on the intimation of the informant given on 05.10.2010, as per

which he received information from his brother (accused) on his mobile stating that his children are crying at home and that he should go and find out the reason. It is thereafter that the informant rushed to his house and saw the dead body of his wife. Apprehension was initially expressed against Anoop Singh and Deepu Singh of murdering the deceased on account of a dispute relating to chabutra (platform). The FIR with these allegations got registered at 11:30 p.m. on 05.10.2010. The inquest started at 01:00 a.m. in the night and was concluded by 04:00 a.m. on 06.10.2010. The inquest witnesses include the accused appellant also which shows that he was present at the time of inquest and had not fled, as was alleged by P.W.-3.

20. In the first information report or even at the stage of inquest there is nothing on record to suspect that it was the accused appellant who had committed the offence. This position clearly contradicts the version of P.W.-3, as per which he saw the accused appellant throttling the deceased and informed both his father and the Police about it.

21. The postmortem was conducted in which the cause of death was ascertained as throttling. As per the prosecution, the implication of the accused appellant surfaced only on the basis of an extra judicial confession made by the accused in the presence of the informant as well as Ashish Singh Chauhan and Saurabh Singh. Ashish Singh Chauhan and Saurabh Singh have been produced as

P.W.-4 & P.W.-6, both of whom have not supported the theory of confession and have turned hostile. The only witness of extra judicial confession, therefore, is the informant himself.

22. The sheet anchor of the prosecution case to implicate the accused appellant is the extra judicial confession made by him on 25th of November, 2010 as well as the testimony of P.W.-3, who is the child witness and is the son of the deceased. At the time of the incident, P.W.-3 was around three years old. These two material evidences have been relied upon by the court of Session to hold the accused appellant guilty of offence under Section 302 I.P.C.

23. At this juncture, a serious question arises as to why the accused appellant was not apprehended on 06.10.2010 itself, if the only eye witness of the incident i.e. P.W.-3 had seen the accused appellant throttling the deceased and informed his father (informant) and the Police. Admittedly, there is no other eye witness account of the incident. We have perused the original records of investigation, from the perusal of which it does appear that the statement of P.W.-3 was recorded under Section 161 Cr.P.C. on 06.10.2010 itself and he had clearly disclosed the I.O. about the accused appellant having throttled his mother.

24. It is a matter of surprise that notwithstanding such information given by P.W.-3 to the I.O. and the informant no steps in the course of investigation was taken against him. The accused appellant was neither arrested nor the prosecution investigated the role of the accused appellant

in the crime. There is absolutely no explanation put-forth by the prosecution for not proceeding on the basis of disclosure made by P.W.-3. The serious lapse in not implicating/apprehending the accused appellant from 06.10.2010 on-wards, till the introduction of the version of alleged extra judicial confession made by the accused appellant on 25.11.2010 remains wholly unexplained. This lapse creates a serious dent in the prosecution case. Even during the course of arguments in this appeal learned A.G.A. has not been able to furnish any credible justification for not acting on the information of P.W.-3.

25. Only two inferences are available in the above situation. Either the disclosure made by P.W.-3 did not exist or the investigation was misdirected and there was a serious lapse on part of the Investigating Officer in the matter.

26. We shall take up the evidence of P.W.-3, first. In order to appreciate the testimony of P.W.-3, we have perused the original records relating to investigation of the case. The case diary has been perused by the Court. The first Parcha issued by the I.O. on 06.10.2010 mentions the recording of the statement of informant which is consistent with the information given by the informant to the Police and the consequential line of investigation.

27. Surprisingly, on the same day i.e. 06.10.2010 another parcha was issued by the Investigating Officer numbered as 1-A, before Parcha No.2. In the Parcha No.1-A, statement of P.W.-3 was recorded as per which it was the

accused appellant who had throttled the deceased in the presence of P.W.-3. P.W.-3 in his testimony before the court has also stated that the accused appellant had throttled the deceased in his presence.

28. The fact that no action was taken by the I.O. on the information given by the P.W.-3 and that this line was not pursued during investigation casts a serious doubt upon the prosecution case. The possibility of this version having been planted, later, cannot be ruled out as it would be inconceivable that no action would be taken by the I.O. on such important information.

29. So far as the extra judicial confession is concerned, the two witnesses to it are P.W.-4 and P.W.-6, both of whom have turned hostile and have not supported the making of extra judicial confession. The informant in the present case is the only witness of extra judicial confession made by the accused. We are therefore required to test the evidentiary value of extra judicial confession allegedly made by the accused appellant to the first informant.

30. The evidence on record makes it clear that the informant remarried within a month of the ghastly murder of his wife. The defence witness D.W.-1 is the real brother of the informant as well as the accused appellant, who has stated that informant had an affair with the lady with whom he later solemnized his second marriage. D.W.-1 has also stated that there were often fight/quarrel between the deceased and the informant on account of the affair between the informant and the lady with whom the

informant remarried soon after the death of his wife.

31. P.W.-3 as well as informant both have admitted the factum of remarriage of informant with Smt. Sangita. In our considered opinion, remarriage of the informant within a month of the murder of his wife is not entirely natural. Remarriage is not expected in ordinary course of things within a month of the murder of the first wife. In the light of the defence evidence that informant had an affair during subsistence of earlier marriage, on account of which quarrel took place between the couple, it would not be safe to rely upon the informant alone to convict the accused.

32. When we test the veracity of the statement of the informant bearing in mind the surrounding circumstances, which reflects adversely on the reliability of the informant, we do not find his testimony to be above doubt.

33. Extra judicial confession by its very nature is otherwise a weak piece of evidence. Unless the attending circumstances are such that the extra judicial confession is found convincing, not much weight can be accorded to it. In view of the fact that the two other witnesses to the extra judicial confession have not supported the prosecution case, and we otherwise suspect the credibility of the disclosure made by P.W.-1, it would be impermissible for us to accept the extra judicial confession as a credible piece of evidence in support of the prosecution case.

34. Law regarding extra judicial confession has been settled by Hon'ble Supreme Court in Kalinga @ Kushal Vs.

State of Karnataka by Police Inspector Hubli 2024 INSC
124. Relevant paras of the report are reproduced hereinafter:-

"14. The conviction of the appellant is largely based on the extra judicial confession allegedly made by him before PW-1. So far as an extra judicial confession is concerned, it is considered as a weak type of evidence and is generally used as a corroborative link to lend credibility to the other evidence on record. In Chandrapal v. State of Chattisgarh, this Court reiterated the evidentiary value of an extra judicial confession in the following words:

"11. At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession. However, this court has consistently held that an extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession. As held in case of State of M.P. Through CBI v. Paltan Mallah, the extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused."

15. It is no more res integra that an extra judicial confession must be accepted with great care and caution. If it is not supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given. The prosecution must establish that a confession was indeed made by the accused, that it was voluntary in nature and that the contents of the confession were true. The standard required for proving an extra judicial confession to the satisfaction of the Court is on the higher side and these essential ingredients must be established beyond any reasonable doubt. The standard becomes even higher when the entire case of the prosecution necessarily rests on the extra judicial confession."

35. Apart from the evidence in the nature of extra judicial confession and the testimony of P.W.-3, there is no other evidence to implicate the accused appellant in the present case. Argument of learned A.G.A. that the statement of P.W.-3 tallies with the injuries found on the deceased is absolutely fallacious, inasmuch as we have found that the

possibility of the version of P.W.-3 having been introduced subsequently cannot be disbelieved. In that situation, it is but natural that version of P.W.-3 would be consistent with the medical evidence on record. Since we find that there is absolutely no explanation put-forth by the prosecution justifying the non-implication of accused appellant on the strength of the testimony of P.W.-3, till 25th of November, 2010, when the extra judicial confession surfaced, we disbelieve the testimony of P.W.-3.

36. P.W.-3 is a child witness and it would be prudent and desirable to look for other evidence, for the purposes of corroboration, which is found lacking. Testimony of a child witness is otherwise required to be examined with due care and cannot be taken on its face value.

37. In such circumstance no other evidence exists on record to implicate the accused appellant.

38. In view of the discussions and deliberations held above, we cannot endorse the finding of conviction and consequential sentence of the accused appellant by the court below, inasmuch as evidence of extra judicial confession as well as testimony of P.W.-3 have not been subjected to careful scrutiny by the court of Session. The finding that prosecution has succeeded in proving the guilt of accused appellant, beyond reasonable doubt, is consequently reversed.

39. For the reasons and discussions held above, this appeal succeeds and is allowed in part. The judgment and order dated 17.04.2019, passed by the Sessions Judge,

Kannauj in Sessions Trial No.20 of 2011 (State of U.P. Vs. Kishan Pratap Singh), arising out of Case Crime No. 449 of 2010, under Section 302 IPC, Police Station–Tirva, District–Kannauj is set-aside.

40. The accused-appellant-Kishan Pratap Singh, who is reported to be in jail, shall be released, forthwith, unless he is wanted in any other case, subject to compliance of Section 437-A Cr.P.C.

Order Date:- 21.8.2024

Anurag/-

(Dr. Gautam Chowdhary, J.) (Ashwani Kumar Mishra, J.)