

HIGH COURT OF MADHYA PRADESH AT JABALPUR**CRA No. 551/1995****Khemchand Kachhi Patel s/o Dalchand Patel****Vs.****State of Madhya Pradesh****Present : Hon'ble Shri Justice S.K.Gangele, Judge
Hon'ble Smt. Justice Anjuli Palo, Judge**

Smt. Pratibha Mishra, Amicus Curiae for the appellant.
Shri A.N.Gupta, Government Advocate for the respondent/State.

Whether approved for reporting : Yes

Law laid down :- Admissibility of statement tendered by an accused to the police – Extra-judicial confession, admissibility of the evidence of statement under Section 6 of the Evidence Act, *res gestae*.

Significant Paragraphs : - 14, 17 & 18.
-----**JUDGMENT**
(18/01/2018)**Per : S.K.Gangele, J :-**

1. The appellant has filed this appeal against the judgment dated 09.03.1995 passed by the Addl. Sessions Judge, Jabalpur in Session Trial No. 592/1992 whereby the appellant has been convicted under Sections 302 of the Indian Penal Code and sentenced to undergo life imprisonment.

2. The prosecution story in brief is that the appellant was living with his wife and two children. At around 7:30 pm in the evening on the date of incident i.e. 31.05.1992, the appellant returned to his

house from the shop. He enquired from his wife Parvati (since deceased) about the meal. There was a quarrel on this ground because the meal was not cooked. Appellant had a suspicion about character of his wife. Thereafter, he had inflicted number of injuries by a sickle on person of the wife and he had also thrown a stone on the head of his wife. She died. Shantibai ((PW-1) mother of the appellant tried to save the deceased. Appellant bite her thumb. The report of the incident was lodged at 8:30 by Shantibai. Appellant himself reached at the Police Station, Lordganj and lodged the FIR (Exh. P/12-A). He was taken into custody. Police conducted investigation and filed charge-sheet. Appellant abjured guilt and pleaded innoce during trial.

3. Learned trial Court held the appellant guilty for committing offence under Section 302 of IPC and awarded sentence of life.

4. Shantibai (PW-1) who is the mother of the appellant turned hostile. She denied the fact that appellant had inflicted injury to the deceased. In her cross-examination, she deposed that she had seen the deceased Parvati lying dead. Thereafter, she went to Madan Mahal station to inform the appellant. She admitted the fact that there was blood on the clothes of the appellant.

5. B.P.Tiwari (PW-2), Photographer for Police Department deposed that, on receiving information, I went along with Incharge

Police Station to the place of occurrence and I had taken photographs of the deceased which are Exh. P/1 to P/7 .

6. Tirath Prasad (PW-3) deposed that, I recorded Rojnamcha *sana* Exh. P/8. Thereafter, I sent the body of the deceased to Victoria Hospital. It is mentioned in the report lodged by Shantibai that there was a quarrel between husband and wife. The appellant had inflicted injuries to the deceased by a sickle.

7. Sheikh Abdulla (PW-4) turned hostile. He denied that any seizure was made before him. However, he admitted the fact that he had signed the seizure memo (Exh. P/10). He was declared hostile.

8. Govind Prasad (PW-5) also turned hostile. He admitted that seizure was made before him vide seizure memo (Exh. P/11) and I signed the same. He admitted his signatures on Exh. P/9 and P/10.

9. Dr. Jainarayan Sen (PW-6) deposed that, I examined Shantibai and noticed one lacerated wound of 1/2cmx1/2cm at the backside of head and one incised wound of teeth bite of 1/4cmx1/4cm on the right thumb.

10. Chandra Mohan Patel (PW-11) is the brother of the deceased. He deposed that, when deceased died she was living with appellant Khemchand. When I returned home at around 9:30 pm, Parvati was dead. Her body was lying at the *varanda* of the house. There

were injuries on her body. The appellant was not there. Police had taken him. I signed Exh. P17 and P/18.

11. Dr. D.K.Sakle (PW-12) deposed that, I performed post-mortem of the deceased and noticed following injuries on her person :

- (i) Skull is completely crushed with fracture of all the bones of the skull. Brain matter is lying outside the cranial cavity.
- (ii) Lacerated wound of size 2"x1/2" above the left eye.
- (iii) Seven stab wounds of size 3/4"x3/4" of variable depths present over the left side of the neck.
- (iv) Five stab wounds of size 3/4"x3/4" of variable depths present on the left side of the chest.
- (v) Six stab wounds of size 3/4"x3/4" of variable depths present over the left upper arm and elbow.
- (vi) Four stab wounds of size 3/4"x3/4" of variable depths present to the left of backside of the chest.
- (vii) Stab wound of size 3/4"x3/4"x skin deep present on the right side of the back of abdomen.
- (viii) Lacerated wound of size 2"x1/2"x1/2" depth present over the left wrist.

12. Dr. Sakle further deposed that the head injuries were caused by hard and blunt object and incised injuries were caused by sharp edged cutting object. The injuries were ante-mortem in nature. The incised injury would be caused by sickle and lacerated wound by stone (*sill*). The injuries were sufficient to cause death.

13. Shri G.P.Shrivastav (PW-8) Investigating Officer deposed that, I was posted as Station House Officer Incharge on 31.05.1992

at Police Station Lordganj. Khemchand Patel S/o Dalchand Patel came to the police station to lodge a report. On his information, I lodged the report (Exh. P/12) and signed the same. I prepared a spot map Exh. P/13 and signed the same. I also seized articles vide seizure memo Exh. P/14 and signed the same. Plain and red earth was seized vide seizure memo (Exh. P/11) and I signed the same. The clothes of the deceased were also seized. On the memorandum of the appellant (Exh. P/9) a sickle was seized vide (Exh. P/11). I signed both the documents. I recorded the statement of Shantibai (Exh. P/1). Appellant was arrested vide arrest memo Exh. P/15. The seized articles were sent for chemical examination vide Exh. P/16. There is no other evidence except this.

14. Important piece of evidence document Exh. P/23 which is an information given by the appellant to Investigation Officer (PW-8). The time is recorded as 20:50. It is mentioned in the document Exh. P/23 that Khemchand Patel s/o Dalchand Patel aged 36 years reported that before some days, I had suspicion about character of my wife. She did not cook food. I asked her that why the food is not cooked. On this, there was a quarrel. Thereafter, I had inflicted injuries on my wife Parvati by a sickle. She fell down. Thereafter, I inflicted blow of a stone (*sill*) on the head of Parvati. Her brain came out. She is lying dead in the house. There is a signature of the appellant on the aforesaid document. It was recorded in

Rojnamcha sana.

15. Shantibai (PW-1) mother of the appellant who lodged the report in which it is mentioned that the appellant had committed murder of the deceased, turned hostile.

16. Chandra Mohan Patel (PW-11) brother of the appellant, deposed that the deceased was his sister-in-law (*bhabhi*). She was living with the appellant Khemchand. I returned back at around 9:30 pm. At that time, she was dead and her body was lying in the *varanda* of the house. The appellant was at the police station. From the evidence of Chandra Mohan Patel (PW-11), this fact has been proved that the appellant was in the house at the time of incident.

17. G.P.Shrivastav (PW-8) Station House Incharge, Police Station, Lordganj in his evidence proved the fact that the appellant himself had come to the police station and Exh. P/12 was lodged and on his information a report was lodged. In his cross-examination, he admitted that on the information given by the appellant I lodged first information report and it was read over to the appellant and appellant signed the same.

18. From the document Exh. P/12 Rojnamcha Exh. P/23, this fact has been proved that the appellant himself had gone to the police station at around 08:50 pm on the date of incident and informed the

Station Incharge that he himself committed murder of the deceased.

The aforesaid statement of the appellant given to the Station Incharge soon before the evidence, is admissible under Section 6 of the Evidence Act.

19. The Hon'ble Supreme Court, in case of **Sukhar Vs. State of Uttar Pradesh [AIR 1999 SC 3883]** has held as under :

“This Court in *Gentela Vijayavardhan Rao and Another V. State of A.P.* 1996 (6) SCC 241 considering the law embodied in Section 6 of the Evidence Act held thus: The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of *res gestae* recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of *res gestae*.

In another recent judgment of this Court in *Rattan Singh V. State of H.P.* 1997 (4) SCC 161, this Court examined the applicability of Section 6 of the Evidence Act to the statement of the deceased and held thus: .

The aforesaid statement of Kanta Devi can be admitted under Section 6 of the Evidence Act on account of its proximity of time to the act of murder. Illustration A to Section 6 makes it clear. It reads thus:

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(emphasis supplied)

Here the act of the assailant intruding into the courtyard during dead of the night, victims identification of the assailant, her pronouncement that appellant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by proximity of time and space that the statement of the deceased became part of the same transaction. Hence it is admissible under Section 6 of the Evidence Act.”

20. The aforesaid statement can also be treated as extra judicial confession. The Apex Court in case of **Jagroop Singh Vs. State of Punjab, (2012) 11 SCC 768** has held as under :

“The second circumstance pertains to extra-judicial confession. Mr. Goel, learned counsel for the appellant, has vehemently criticized the extra-judicial confession on the ground that such confession was made after 18 days of the occurrence. That apart, it is submitted that the father of Natha Singh and grand-father of the deceased are real brothers and, therefore, he is an interested witness and to overcome the same, he has deposed in Court that he has strained relationship with the informant, though he had not stated so in the statement recorded under Section 161 of Cr.P.C.

The issue that emanates for appreciation is whether such confessional statement should

be given any credence or thrown overboard. In this context, we may refer with profit to the authority in *Gura Singh v. State of Rajasthan*[12] wherein, after referring to the decisions in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh*[13], *Maghar Singh v. State of Punjab*[14], *Narayan Siingh V. State of M.P.*[15], *Kishore Chand v. State of H.P.* [16] and *Baldev Raj v. State of Haryana*[17], it has been opined that it is the settled position of law that extra judicial confession, if true and voluntary, can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra-judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and his evidence is credible. The evidence in the form of extra-judicial confession made by the accused before the witness cannot be always termed to be tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that it was true and voluntarily made, then the conviction can be founded on such evidence alone. The aspects which have to be taken care of are the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. That apart, before relying on the confession, the court has to be satisfied that it is voluntary and it is not the result of inducement, threat or promise as envisaged under Section 24 of the Act or brought about in suspicious circumstances to circumvent Sections 25 and 26.

Recently, in *Sahadevan & Another v. State of Tamil Nadu*[18], after referring to the rulings in *Sk. Yusuf v. State of W.B.*[19] and *Pancho v. State of Haryana*[20], a two-Judge Bench has laid down that the extra-judicial

confession is a weak evidence by itself and it has to be examined by the court with greater care and caution; that it should be made voluntarily and should be truthful; that it should inspire confidence; that 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; that for an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities; and that such statement essentially has to be proved like any other fact and in accordance with law.”

21. In our considered opinion, before appreciation of evidence, it has to be kept in mind that the deceased was the wife of accused-appellant. She was living with the appellant. The mother of the appellant turned hostile which is a natural phenomenon. There is no other evidence. But this fact has been proved that the appellant was at his house at the time of incident. He himself went to the police station and narrated the incident. In his accused statement, the appellant stated that, I was at my shop. Mother informed me and thereafter, police came there. They had taken me to the police station. The statement of the appellant is contrary to the statement of Investigating Officer. There was no intention of the Investigating Officer to record information on behalf of the appellant because the appellant is the husband of the deceased. Nobody will falsely implicate a husband. The appellant produced a defence witness. However, version of the defence witness is not

reliable. Shantibai (PW-1) mother of the appellant lodged a report in which name of the appellant as 'assailant' has been mentioned. Subsequently, she turned hostile to save her son.

22. In view of the evidence on record as discussed above, in our considered opinion, the Trial Court rightly held the appellant guilty for committing offence under Section 302 of the Indian Penal Code and awarded proper sentence. We do not find any merit in this appeal. It is hereby dismissed.

23. Appellant is on bail. His bail bonds are canceled and he is directed to surrender immediately before the concerned trial Court to undergo the remaining part of jail sentence as awarded by the trial Court, failing which the trial Court shall take appropriate action under intimation to the registry.

24. Copy of this judgment be sent to the Court below for information and compliance alongwith its record.

(S.K.GANGELE)
JUDGE

(SMT. ANJULI PALO)
JUDGE