



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 13th OF JANUARY, 2026

CRIMINAL APPEAL No. 1893 of 2020

KRISHNA KUMAR RAJAK AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Ms. Renu Gupta, learned counsel for the appellant no.1.

Shri Jayesh Singh Thakur, learned counsel for appellant no.2.

Shri Manas Mani Verma, learned Government Advocate appearing on behalf of Advocate General.

J U D G M E N T

Per: Justice Vinay Saraf.

1. The appellants have preferred the instant appeal being aggrieved by the judgment dated 04.02.2020 delivered by the Special Judge, Schedule Castes & Schedule Tribe (Prevention of Atrocities) Act, Mandla in Special Case No.18/2017, whereby learned Special Judge has convicted the appellants Krishna Kumar Rajak and Satyendra Varkade under Section 302 read with Section 34 of the IPC, 201 of IPC and sentenced each of them to undergo imprisonment for life and RI for three years respectively and fine amount of Rs.10,000/- and Rs. 2000/- with default stipulation, however, learned Special Judge acquitted co-accused Brajesh @ Ghoi Maravi from all the



charges and appellants were also acquitted from the charges leveled under Section 3(2)(5) of the Schedule Tribe and Schedule Caste (Prevention of Atrocities) Act, 1989 and 376 (D) of I.P.C.

2. Prosecution case in brief is that on 21.11.2016, Simbhu Das Bairagi (PW1), Village Kotwar of Village Keriwah informed to the Police Niwas, District Mandla that dead body of a young lady is lying in the forest of Village Keriwah and several parts of the body were eaten by wild animals. Upon his information, Police went at the spot and recovered the dead body of unknown lady on 21.11.2016 on 11:40 am and registered inquest intimation report Ex.P-1 under Section 174 of the Cr.P.C.
3. Upon registration of inquest report, the enquiry started and the police officer prepared spot memo, seized the incrementing articles from the spot and forwarded the body for postmortem. Post mortem report revealed that the deceased was murdered and resultantly Police Niwas, District Mandla registered Crime No.218/2016 under Sections 302, 201 of the IPC against unknown person and started investigation. Upon enquiry the Police came to know that daughter of Basant Soyam (PW-10) of Village Majhgao was missing since 14.11.2016, however, no missing person report was lodged. Basant Soyam (PW10) informed that his daughter was missing however he could not identify the body as his daughter, and for the purpose of identification, the femur bone of right leg of the deceased was sent for DNA examination with the blood samples of the Basant Soyam and his wife. In DNA report, it was confirmed that the body recovered from the forest of Keriwah was of the missing daughter of



Basant Soyam. During investigation, Basant Soyam informed to the Investigating Officer that his daughter was using one Galaxy Star Pro Black Mobile of Samsung Company and the same was in her own name. Thereafter, Special Investigating Team was constituted and CDR details of the mobile were obtained and from the examination, it was revealed that one Ram Charan Parte (PW11) was using the said mobile phone. The mobile phone was seized from the possession of Ramcharan Parte, who disclosed that he purchased the mobile phone from one Dilip Marko (PW15).

4. Upon enquiry, Dilip Marko revealed that he purchased the said mobile from Krishna Kumar Rajak (appellant no.1) at Rs.700/- and sold the same to Ramcharan Parte for Rs.2000/-. On the basis of the aforesaid information and examination of CDR, it came on record that after death of deceased, appellant Krishna Kumar Rajak used mobile phone of the deceased. Thereafter, he was interrogated and during interrogation, he accepted that with the help of co-accused Satyendra (appellant no.2) he murdered deceased to whom he loved, but she was in relation with some other boy. Upon his information, the burnt cloths of the deceased were seized by the police and shirt and trouser allegedly used by the appellant, Krishna Kumar Rajak at the time of incident were also seized from his possession.
5. Satyendra Varkade(appellant no.2) produced the photograph of the deceased and her education certificate, which were seized from his possession with a brown colored ladies purse. Another black colour ladies purse was seized from co-accused Brajesh along with the photocopies of the mark sheet and certificate of the High School and



Class IX mark sheet of the deceased. As the deceased belonged to the Schedule Tribe, Section 3(2)(5) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 was enhanced. The accused persons disclosed in their memos that before committing murder, they committed rape with the deceased and therefore, Section 376 (D), 376(2) were also added in the case.

6. After registration of the offence, accused persons were arrested and after conclusion of investigation, the charge-sheet was filed on 19.07.2017 under Section 302, 201/ 34, 376(D), 376(2) of the Indian Penal Code and Section 3(2)(5) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities Act, 1989 against the appellants and co-accused, Brajesh Maravi in the Court of Judicial Magistrate First Class, Niwas, District Mandla, who committed the case to the Special Court, SCST (PoA) Act, Mandla. The Special Court framed the charges under Sections 376 (D), 302, in alternate 302 read with 34, 201 of the IPC and 3(2)(5) of SC and ST (PoA) Act, 1989 against the appellant no.1 Krishna Kumar Rajak and under Section 376 (D), 302, 302 r/w 34 and 201 of the IPC against the appellant Satyendra and co-accused Brajesh.
7. The accused persons denied the charges and demanded the trial. During trial, the prosecution examined as many as 36 witnesses, PW1 Simbhu Das Bairagi, PW2 Sibbulal, PW3 Jamuna Bai, PW4 Kunwar Singh, PW5 Radheshyam, PW6 Veer Singh Maravi, PW7 Santosh Sahu, PW8 Nanhe Lal Sahu, PW9 Lambu Maravi, PW10 Basant Soyam, PW11 Ramcharan, PW12 Sanjay Bairagi, PW13 Balram, PW14 Jagdish, PW15 Dilip Marko, PW16 Manoj Kumar,



- PW17 Susheel, PW18 Geeta Bai, PW19 Neema Bai, PW20 Soni Lal, PW21 Brijesh Kumar Chaoudhari, PW22 Somnath, PW 23 Abhishek Thakur, PW24 Dr. Manoj Chauhan, PW25 Akarsh Soni, PW26 S.N. Pathak, PW27 Suresh, PW28 Arvind Singh, PW29 Ratan, PW30 Munna Singh Maravi, PW31 Dalsingh Damor, PW32 Sooraj Nagvanshi, PW33 Smt. Poorvi Tiwari, PW34 Ravindra Singh Tomar, PW35 Pratap Singh and PW36 Kamlesh Pandram.
8. Prosecution exhibited 117 documents as P-1 to P-117 and 14 articles were produced by the prosecution during trial. In the examination of accused persons under Section 313 of the Cr.P.C., they denied the prosecution allegations and stated that they have been falsely implicated in the case. The defense did not examine any witness in their support.
 9. Learned Special Judge after recording the evidence of the prosecution witnesses and examination of the accused persons under Section 313 of Cr.P.C. and providing the opportunity of hearing to the parties, by judgment dated 04.02.2020 acquitted the co-accused Brajesh Maravi from all the charges, appellant Krishna Kumar Rajak from the charges punishable under Section 3(2)(5) of the SC & ST (POA) Act, 1989 and 376(D) of I.P.C., appellant Satyendra from the charges under Section 376(D) of I.P.C., however convicted the appellants for the offences punishable under Section 302 read with Section 34 and 201 of the IPC and sentenced as stated herein above.
 10. With the consent of counsel for the parties, final arguments were heard for the purpose of final disposal of the appeal.



11. Ms. Renu Gupta, counsel appeared on behalf of the appellant no.1 submits that there is no direct evidence available against the present appellant and the prosecution has failed to prove the circumstances by cogent evidence to meet the standard of proof beyond reasonable doubt. She further submits that learned Special Judge has convicted the appellants relying upon the statement of PW17 Susheel Maravi, who deposed that the accused persons accepted their guilt during travelling to Jabalpur from Niwas, however, neither there was any occasion to make any extra judicial confession nor the same was immediately informed to investigating agency by the witness and after a period of three months and four day, the same was disclosed by the witness, which is not believable. Learned counsel further submits that extra judicial confession is neither admissible nor credible and the extra judicial confession should be volunteer and must meet the beyond reasonable doubt since threshold. She further submits that learned Special Judge has not believed upon the theory of last seen and therefore, the extra judicial confession is also not believable.
12. Learned counsel for the appellant no.1 further submits that prosecution has tried to brought on record that the appellant Krishna Kumar purchased 2 nos. Super Max Blade from the shop of PW12 Nanhelal and the wrapper of the blade was seized from the spot and the deceased sustained incised wound on her neck, but PW24 Dr. Manoj Chouhan did not state that the said injury was caused by such blade. She further submits that call details (CDR) produced by the prosecution are not conclusive proof to prove that the appellant has



committed the offence of murder, the mobile phone of deceased was seized from the possession of PW11 Ramcharan after a period of two and half months and no witness of the seizure memo of mobile phone was examined by the prosecution during trial. On the basis of the CDR, it cannot be accepted that the appellant was involved in the offence of murder. No weapon was seized from the possession of the appellant. No blood stain was found on the clothes allegedly seized from the possession of the appellant. She submits that the prosecution failed to prove the case beyond reasonable doubt against the appellant Krishna Kumar Rajak. However, learned Special Judge without proper appreciation of the evidence available on record convicted the present appellant only on the basis of the extra judicial confession and recovery of mobile from the possession of the PW11 Ramcharan. She prays for setting aside the judgment and findings recorded by the learned Special Judge and to acquit the appellant no.1, Krishna Kumar Rajak.

13. Shri Jayesh Singh Thakur, Advocate appearing on behalf of the appellant no.2 Satyendra Varkade submits that the prosecution failed to bring any connecting evidence on record against the appellant Satyendra. The prosecution has tried to connect Satyendra only on the basis of the seizure memo and the statement of PW17. By the seizure memo, allegedly one brown color ladies purse was seized containing the educational certificates of deceased and passport size colored photograph of the deceased from the possession of the appellant Satyendra. The said articles were allegedly seized after a long period of the incident and seized from the residents of the in-



laws of the appellant. He submits that seizure has not been proved by the prosecution by cogent evidence. The extra judicial confession is not trustworthy and the prosecution has failed to complete the chain of circumstances to prove the offence against the appellant Satyendra. He prays for allowing the appeal and setting aside the judgment and conviction of sentence against the appellant Satyendra and to acquit him from the charges.

14. Shri Manas Mani Verma, Government Advocate appearing on behalf of the respondent/State supported the impugned judgment and submits that the prosecution proved the chain of evidence and completed the chain by producing the cogent and reliable evidence in the case. He further submits that PW8 Nanhe Lal proved the fact that appellant Krishna Kumar Rajak purchased 2 nos. blade of Super Max Company and wrapper of the blade was found near the dead body. The appellant Krishna Kumar Rajak was having the motive to commit the offence of murder as he was in one sided love with the deceased and he had doubt on her character. PW 17 Susheel Maravi deposed the fact that Krishna Kumar and Satyendra visited at his shop along with the deceased and while travelling to Jabalpur they themselves disclosed before him that they have committed rape and murder. The extra judicial confession was volunteer and truthful. The same was duly proved by PW17 and the learned Special Judge has not committed any error in relying on extra Judicial Confession. More so, mobile phone which was being used by the deceased was later on used by the appellant Krishna Kumar Rajak, who sold the same to PW15 Dilip Marko for consideration of Rs.700/- and Dilip



Marko sold the same to Ramcharan for a consideration of Rs.2000/-. The mobile phone was seized from the possession of Ramcharan. This fact was duly proved by (PW15)Dilip Marko and Ramcharan (PW11) during trial. CDR report proved that mobile phone of deceased was used by appellant Krishna Kumar Rajak after her death and SIM issued in the name of Krishna Kumar was used in the mobile phone of deceased after the incident. He submits that chain of circumstances was complete. The Special Judge has not committed any error in relying on the confession of the appellants. He prays for dismissal of the appeal.

15. We perused the record of the trial Court and considered the arguments advanced by the learned counsels for the parties.
16. From perusal of record, it appears that the Special Judge has convicted the appellants on the basis of extra judicial confession made by the appellants before Sushil Maravi (PW-17), appellant Krishna Kumar purchased two number of super max blade on 14.11.2016 from the shop of Nanhe Lal Sahu (PW-8) and use of mobile phone of the deceased after the incident by appellant Krishna Kumar and later on sold the same to Dilip Marko (PW-15), who sold it to Ramcharan Parte (PW-11) and from whose possession, the same was seized by the Investigating Officer.
17. In the case in hand admittedly there is no direct evidence is available. Even as per the Special Judge, no weapon seized from the possession of any of the appellants and the entire case of the prosecution is rests on circumstantial evidence. We are conscious of the five golden principles set up and repeatedly reiterated by Apex Court, which are



to be born in mind in cases involved in circumstantial evidence. Apex Court in ***Sharad Bhirdichand Sardavs. State of Maharastra, 1984 (4) SCC 116***, summarized the principles and observed as under:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

18. Keeping in mind the aforesaid above principles applicable in a case based on circumstantial evidence, we examined the case in hand and from perusal of record, it appears that dead body of a young lady was lying in the forest of village Keriwah, and several parts of the body were eaten by the wild animals and the body was not recognizable.



Sibbu Lal Chakrawarty (PW-2) intimated of laying of a body of young lady to Village Kotwar Shambhu Das Bairagi (PW-1), who reached to the spot and body was seen by several villagers including Smt. Jamna Bai (PW-3), Kuwar Singh (PW-4) and Radheshaym (PW-5). Shambhu Das Bairagi intimated to the Police, Police reached at the spot, prepared the spot memo, inquest report was registered under Section 174 of Cr.P.C. Body was examined in the presence of witnesses and sent for post mortem. During post mortem, foul smell was coming from the body. Most of the parts were already eaten by the wild animals. From examination of the body, one lacerated wound of 2x1x1 inch on the right side of the head, another lacerated wound of 2x1x1 inch just about mastoid bone of right side was found and one incised wound 3x1x1/2 inch was found on the front and middle of the neck. There was fracture in the frontal and occipital bone of right side of the head. In the opinion of the Doctor, death was homicidal and caused due to head injuries caused by hard and blunt object and in the opinion of the Doctor, death was caused 4-7 days back.

19. It is not in dispute that till cremation of the body near mortuary room, it could not be identified. Investigating Officer registered F.I.R. on 23.11.2016 vide Crime No.218/2016 against unknown person on the basis of post mortem report and started investigation and during investigation received information regarding missing of daughter of Basant Soyam (PW-10), however, Basant Soyam (PW-10) and his wife Geeta Bai (PW-18) could not identify the body on the basis of photo of the recovered body as the condition of the body was very



bad and it was almost turned into a skeleton. However, for the purpose of conformation, femur bone of the right thigh of the deceased was referred to chemical examiner for DNA test with the blood samples of Basant Soyam (PW-10) and Geeta Bai (PW-18). From DNA report (Ex.P/73A), it was confirmed that the body recovered at the instance of information received by the Police Station Niwas, District Mandal on 14.11.2016 from the forest of Village Keriwah was of Seema Soyam (deceased) who was the biological daughter of Basant Soyam(PW-10) and Geeta Bai (PW-18).

20. The aforesaid evidences produced by the prosecution were reliable, trustworthy and could not be rebutted by the defence during trial and on the basis of aforesaid evidence, it was proved by the prosecution before the trial Court that Seema (deceased) daughter of Basant Soyam (PW-10) and Geeta Bai (PW-18) was missing from 14.11.2016 and her body was recovered from the forest of Village Keriwah on 21.11.2016 and the cause of death was head injuries caused by hard and blunt object before 4 to 7 days from the date of the post mortem, which was carried on 21.11.2016.
21. As no direct evidence was available with the prosecution, the prosecution tried to prove the offence by adducing circumstantial evidence. So far as the last seen evidence is concerned, same is inconclusive however Jagdish (PW-14) stated that appellant Satyendra along with a girl came to his field and later on went towards forest of Village Keriwah. That girl could not be identified by the witness neither any efforts were made to identify the



photograph of the deceased and it was also not established that when appellant Satyendra came to his field, therefore, the statement of Jagdish (PW-14) is of no use. Similarly, Neema Bai (PW-19) stated that in the year 2016, at the time of Dusshera, appellant Krishna Kumar came to her home along with Seema (deceased) and they stayed for a period of two days. By this statement, the prosecution could establish only one fact that deceased was known to appellant Krishna Kumar, but the statement of Neema Bai (PW-19) could not be treated as last seen evidence. In this way, prosecution failed to prove the last seen evidence in the case.

22. Several memorandums were prepared by the Investigating Officer and other Police Officers during investigation, wherein the confessional statements of accused persons were recorded. However, the same are not admissible in evidence in view of Section 25 and 26 of the Evidence Act and Section 162 of Cr.P.C. On the basis of memorandum, from open place, some pieces of burnt clothes of the deceased and iron clip of sandal were seized at the instance of appellant Krishna Kumar, but the same could not be connected with the crime. Shirt and Trouser of appellant Krishna Kumar were also seized from his possession, but in the absence of any evidence of human blood, the seizure of shirt and trouser is insignificant. Some spot memos were prepared on the information given by appellant Krishna Kumar. However, the same are also insignificant in light of the fact that Investigating Officer had already aware of the spot from where the articles were seized and body was recovered.



23. Nanhe Lal Sahu (PW-8) stated that two number of super max blade were sold to appellant Krishna Kumar on 14.11.2016. As per prosecution, wrapper of blade was recovered at the spot just 15 feet away from the body and deceased sustained one incised wound at her neck. But in the absence of recovery of blade and any opinion of the Doctor that the incised wound found on the front and middle neck of the deceased could be caused by blade, the same cannot be used for the purpose of connecting the appellant Krishna Kumar with the offence of murder. Firstly, it is not possible for any shopkeeper to remember that when and who purchased super max blade from his shop three months ago and secondly, only on the ground of seizure of wrapper of blade, no presumption can be drawn that the injuries were caused with the help of super max blade. The statement of Nanhe Lal Sahu (PW-8) is not trustworthy as he is admitted in his cross examination that several persons used to purchase super max blade from his shop daily.
24. The Special Judge has based the finding of conviction mainly on the ground of extra judicial confession, which were allegedly made by the appellants to Sushil Maravi (PW-17) who stated that when the appellants were travelling with him from Niwas to Jabalpur in a Bus, on the way, they made confession that they murdered Seema and later on threatened him for not to disclose this fact to anyone. The legal position in respect of extra judicial confession is no more *res integra* that an extra judicial confession must be volunteer, the circumstances to made the confession should be probable and natural as well as trustworthy.



25. Supreme Court observed in respect to an any extra judicial confession in ***State Punjab vs. Bhajan Singh and others, 1975 (4) SCC 472*** and held as under:

“15. Coming to the evidence of extra-judicial confessions, we find the same to be improbable and lacking in credence. According to Gurmej Singh and Jabarjang Singh PWs, the confessing accused came to them and blurted out confessions. They also requested these two witnesses to produce them before the police. The resume of facts given above would go to show that according to the prosecution case the murders of the three deceased persons were committed in a most heinous manner and under a veil of secrecy. Persons who commit such murders after taking precautions of secrecy are not normally likely to become garrulous after the commission of the offence and acquire a sudden proneness to blurt out what they were at pains to conceal. In any case it seems rather odd that all the three accused who had not been arrested till the morning of May 9, 1972 should be seized almost at the same time by a mood to make confession. It is significant that Surjit Singh, Charan Kaur and Jito accused had no particular relationship or connection with Gurmej Singh and Jabarjang Singh PWs. These two witnesses were also not in such a position that the abovementioned three accused would be willing to repose their confidence in them. If Surjit Singh, Charan Kaur and Jito wanted to surrender themselves before the police, we fail to understand as to why they should not themselves surrender before the police and go instead to Gurmej Singh and Jabarjang Singh and blurt out confessions before them. The evidence of extra-judicial confession in the very nature of things is a weak piece of evidence. The evidence adduced in this respect in the present case lacks plausibility and, as observed by the High Court, it does not inspire confidence.”

26. Supreme Court reiterate the same in ***Sahadevanand another vs. State of Tamil Nadu, 2012 (6) SCC 403***, wherein it is held that :-

“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.

X----X----X

16. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the 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.”

27. In *Kalinga@ Kushalvs. State of Karnataka, 2024(4) SCC 735*, Supreme Court held as under:-

14. We may now proceed to delineate the issues that arise for the consideration of this Court, as follows:

*15. 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 Chhattisgarh* [*Chandrapal v. State of Chhattisgarh, (2023) 16 SCC**



655 : 2022 SCC OnLine SC 705] , this Court reiterated the evidentiary value of an extra-judicial confession in the following words : (SCC OnLine SC para 11)

“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 State of M.P. v. Paltan Mallah [State of M.P. v. Paltan Mallah, (2005) 3 SCC 169 : 2005 SCC (Cri) 674] , 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.”

16. *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.”

28. In the recent judgment delivered in ***Ramu Appa Mahapatra vs. State of Maharashtra, 2025 (3) SCC 565*** considering the evidence of extra judicial confession, Apex Court has held as under:-

21. 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 appears 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 unmistakably 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.

22. 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.



23. In Sansar Chand v. State of Rajasthan [Sansar Chand v. State of Rajasthan, (2010) 10 SCC 604 : (2011) 1 SCC (Cri) 79] , 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.

24. Evidentiary value of an extra-judicial confession was again examined in detail by this Court in Sahadevan v. State of T.N. [Sahadevan v. State of T.N., (2012) 6 SCC 403 : (2012) 3 SCC (Cri) 146] 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 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.

25. 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 : (Sahadevan case [Ramu Appa Mahapatra v. State of Maharashtra, 2010 SCC OnLineBom 1839] , SCC p. 410, para 14)

“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.”

26. *Upon an indepth analysis of judicial precedents, this Court in Sahadevan [Sahadevan v. State of T.N., (2012) 6 SCC 403 : (2012) 3 SCC (Cri) 146] 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 : (SCC pp. 412-13, para 16)*

“16. ... (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.”

29. In backdrop of the law laid down by the Apex Court, when we examined the extra judicial confession made by the appellants in the



case in hand, the statement of Sushil Maravi (PW-17) does not appear to be honest and trustworthy as there was no occasion for the appellants to make such confession to Sushil Maravi in a Bus, and it seems very odd that they themselves disclosed the fact of commission of offence, who after committing the offence, tried to damage the body of deceased with an object that the same should not be identified by anyone. People who committed such murder after taking precaution of secrecy, are not likely to become glorious after the commission of offence and make such confessional statement before any person. The witness disclosed this fact to the Police after a period of 3 months and 4 days. Under these circumstances, the Special Court has committed error in accepting the aforesaid extra judicial confession, which was neither made immediately after the incident nor there was any occasion to disclose this fact to anyone and the same was reported to the Police after inordinate delay of 3 months and 4 days. We hold that the aforesaid extra judicial confession cannot be made the basis of conviction.

30. Mobile Phone of the deceased was seized from the possession of Ramcharan Parte (PW-15), who purchased the same from Dilip Marko (PW-11) and Dilip Marko (PW-11) deposed that he purchased the same from appellant Krishna Kumar. In the present case, prosecution has proved this fact beyond reasonable doubt from CDR received from mobile company that the deceased was using a mobile phone having IMEI No.353125066992850 by using SIM No.7049857950 and used the same till 17:45:42 of 14.11.2016.



31. From CDR, the prosecution could prove this fact that from 01.12.2016, the same mobile set having IMEI No.353125066992850 was used by appellant Krishna Kumar, who inserted SIM No. 9111722105 and switched on the mobile phone on 01.12.2016 at 18:54:21. Thereafter, he used the mobile phone continuously till he sold the same to Dilip Marko (PW-15) and thereafter Ramcharan Parte used the same mobile phone from whose possession the mobile phone was seized. There is no direct evidence on record to show that mobile phone was snatched by the appellant Krishna Kumar from the deceased. Prosecution could not produce any evidence to connect seizure of mobile with the offence of murder, however could prove the fact that the stolen article was used by one of the appellants. There was an occasion to the Supreme Court to consider such a situation in ***Sanwat Khan and another vs. State of Rajasthan, 1952 (2) SCC 641*** and the Supreme Court held as under:-

“7. The learned counsel for the State in support of the view taken by the High Court placed reliance on a decision of the Madras High Court in Queen Empress v. Sami [Queen Empress v. Sami, ILR (1890) 13 Mad 426] . The headnote of the Report says that : (ILR p. 427) recent and unexplained possession of the stolen property which would be presumptive evidence against the prisoners on the charge of robbery would similarly be evidence against them on the charge of murder. This headnote, however, does not accurately represent the decision given by the learned Judges. In the particular circumstances of that case it was observed that in cases in which murder and robbery are shown to form parts of one transaction, recent and unexplained possession of the stolen property while it would be presumptive evidence against a prisoner on the charge of robbery would similarly be evidence against him on the charge of murder. Here, there is no evidence, direct or circumstantial, that the robbery and murder formed parts of one transaction. It is not even known at what time of the night these events took place. It was only late next morning that it was



discovered that the Mahant and Ganpatia had been murdered and looted.

8. In our judgment, Beaumont, C.J. and Sen, J. in Emperor v. BhikaGobar [Emperor v. BhikaGobar, AIR 1943 Bom 458 : 1943 SCC OnLineBom 32] rightly held that the mere fact that an accused produced, shortly after the murder, ornaments which were on the murdered person is not enough to justify the inference that the accused must have committed the murder. There must be some further material to connect the accused with the murder in order to hold him guilty of that offence.

9. Our attention was drawn to a number of decisions, which have been summed up in a Bench decision of the Allahabad High Court in Shanker Prasad v. State [Shanker Prasad v. State, AIR 1952 All 776 : 1952 SCC OnLine All 189] , in some of which a presumption was drawn of guilt from the circumstance of possession of stolen articles soon after a murder. We have examined these cases and it appears to us that each one of these decisions was given on the evidence and circumstances established in that particular case, and no general proposition of law can be deduced from them. In our judgment, no hard-and-fast rule can be laid down as to what inference should be drawn from a certain circumstance. Where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murderer. Suspicion cannot take the place of proof.”

32. The proposition laid down in the matter of ***Sanwat Khan (supra)*** was reiterated in several cases by Apex Court and in ***State of Rajasthan vs. Talevar and another, 2011 (11) SCC 666***, Supreme Court held as under:-

“18. Thus, the law on this issue can be summarised to the effect that where the only evidence against the accused is recovery of stolen properties, then although the circumstances may indicate that the theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of the stolen property had committed the murder. It also depends on the nature of the property so recovered, whether it was likely to pass readily from hand to hand. Suspicion should not take the place of proof.”



33. In an almost similar circumstances, when the mobile phone of the deceased was seized from the possession of accused, the core question before the Supreme Court was that what is the effect of recovery of mobile phone which belongs to deceased and considering the same the Supreme Court has held in ***Sonu @ Sunil vs. State of M.P., 2022 (13) SCC 705***, dealing with the case of murder and robbery, Supreme Court has held that, “*where however, the only evidence against an accused persons is the recovery of stolen property and although the circumstances may indicate that the theft and murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of stolen property was the murderer. Suspicion cannot take the place of prove.*” Relevant paras of the judgment are as under :-

31. *What is the effect of recovery of the mobile proceeding on the basis that it belonged to the deceased? Section 114 of the Evidence Act with Illustration (a) reads as follows:*

“114. Court may presume existence of certain facts.—*The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*

Illustrations

The Court may presume—

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;”

33. *On the other hand, in Sanwat Khan v. State of Rajasthan [Sanwat Khan v. State of Rajasthan, (1952) 2 SCC 641 : AIR 1956 SC 54] , one Mahant Ganesh Das, who was a wealthy person, used to live in a temple of Shri Gopalji along with another person. Both of them were found dead. The house had been ransacked and boxes and almirah opened. It was not known at the time who committed the offence.*



Investigation resulted in arrest of the appellant, and on the same day, he produced a gold khanti from his bara, where it was found buried in the ground. Another accused produced a silver plate. The Court found that there was no direct evidence. There were certain circumstances which were rejected by the Sessions Judge and the solitary circumstance was the recovery of the two articles. In these circumstances, the Court held, inter alia, as follows : (SCC pp. 645-46, paras 6-9)

“6. ... Be that as it may, in the absence of any direct or circumstantial evidence whatsoever, from the solitary circumstance of the unexplained recovery of the two articles from the houses of the two appellants the only inference that can be raised in view of Illustration (a) to Section 114 of the Evidence Act is that they are either receivers of stolen property or were the persons who committed the theft, but it does not necessarily indicate that the theft and the murders took place at one and the same time.

* * *

7. ... Here, there is no evidence, direct or circumstantial, that the robbery and murder formed parts of one transaction. It is not even known at what time of the night these events took place. It was only late next morning that it was discovered that the Mahant and Ganpatia had been murdered and looted.

8. ... In our judgment, Beaumont, C.J., and Sen, J. in — Emperor v. Bhika Gobar [Emperor v. Bhika Gobar, 1943 SCC OnLine Bom 32], rightly held that the mere fact that an accused produced shortly after the murder ornaments which were on the murdered person is not enough to justify the inference that the accused must have committed the murder.

* * *

9. ... In our judgment no hard-and-fast rule can be laid down as to what inference should be drawn from a certain circumstance. Where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murderer. Suspicion cannot take the place of proof.”

(emphasis supplied)

34. In backdrop of above law laid down by Supreme Court, only on the basis of recovery of a stolen article of deceased from the possession



of an accused, the accused cannot be held guilty of the commission of murder. The mobile phone was used by appellant Krishna Kumar after several days of incident of murder and therefore, at the most, accused may be held for guilty of possessing the stolen articles, punishable under Section 411 of IPC. Recovery of mobile phone itself is not sufficient to implicate the present appellant in the offence of murder and as no charge was imposed under Section 411 of IPC, the appellant can't be punished for the offence punishable under Section 411 of IPC also.

35. In the above circumstance, if coupled with the recovery of mobile phone of deceased from the possession of Ramcharan (PW-15) to whom the same was sold by Dilip Marko (PW-11) who purchased the same from appellant Krishna Kumar, at best, create a highly suspicious situation, but beyond a strong suspicion, nothing else would follow in the absence of any other evidence or circumstance, which could suggest the involvement of the appellant in the offence of murder as alleged. Even with the aid of presumption under 114 of the Evidence Act, the charge of murder cannot be brought home unless there is some evidence to show that the appellant was involved in the offence of murder and the theft and murder occurred at the same time i.e. in the course of some transaction. No such evidence is available in the case in hand.
36. From aforementioned discussion, it established that the prosecution had not been able to prove its case beyond reasonable doubt and the chain of circumstantial evidence is not so complete so as to lead to



only one irresistible conclusion that it is the accused alone who has committed the offence.

37. We are of the view that prosecution failed to prove the offence against appellants beyond reasonable doubt. The only evidence, which could be brought by the prosecution on record against the appellant Krishna Kumar is in respect of the recovery of mobile phone of the deceased, and as discussed hereinabove, the same cannot be the basis of conviction for the offence of murder.
38. Resultantly, the impugned judgment dated 04.02.2020 passed by Special Judge, Schedule Castes & Schedule Tribe (Prevention of Atrocities) Act, Mandla in Special Case No.18/2017, is hereby set aside and the appellants/accused persons are acquitted from the charges framed under Section 302 read with 34 and 201 of IPC.
39. Record of the trial Court be forwarded along with the copy of this judgment. The appellants be released forthwith, if they are not required in any other case.

(VIVEK AGARWAL)
JUDGE

(VINAY SARAF)
JUDGE

Irfan