

Cr.A.No.15493/2023

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR**BEFORE****HON'BLE SHRI JUSTICE VIVEK AGARWAL****&****HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY****ON THE 8TH OF DECEMBER, 2025****CRIMINAL APPEAL NO.15493 OF 2023****JYOTI****VERSUS****STATE OF MADHYA PRADESH**

Appearance:*Shri Makbool Khan – Advocate for the appellant**Shri Nitin Gupta – Government Advocate for the respondent/State.*

J U D G M E N T*Per: Justice Ramkumar Choubey:*

Albeit, the matter is listed for consideration of I.A.No.687/2024, which is first application filed under Section 389(1) of the Code of Criminal Procedure, 1973 (for short "CrPC") for suspension of sentence and grant of bail to the appellant, however, rather pressing on the said application, the learned counsel for the parties concur to argue the matter finally. Thus, it is heard finally.

2. Appellant/accused has filed this appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (in short- "Cr.P.C") assailing the judgment dated 31.01.2023 passed by the learned Second Additional

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Sessions Judge, Multai, District Betul (M.P.) in S.T. No.27/2022, whereby learned trial Court has convicted the appellant for the offence punishable under Section 302 of IPC and sentenced to undergo imprisonment for life and fine of Rs.500/- with default stipulation.

3. The facts of the case lie in a narrow compass. Suffice it to say that on 05.03.2022, the first informant Rajesh, who happens to be husband of the appellant and father of the deceased girl-child, at around 06:30 a.m. when coming back from his field, on the way saw an emerging crowd near the house of Dayaram Dongerdiye and found that his wife (appellant) along with his daughter Ishika (deceased) had fallen into a Well, out of it, the people pulled them and due to drowning in the Well daughter Ishika had died. Both were taken to hospital through 108 Ambulance. Dehati inquest report (Ex.P/1) was recorded. The statement of appellant was recorded by Naib Tahsildar. Postmortem of the deceased was conducted. It was found that the appellant had jumped into Well with an intent to kill her daughter. An FIR vide Crime No.234/2022 for the offence punishable under Section 302 of IPC was registered against the appellant. After completion of the investigation, a final report was submitted to the concerned Judicial Magistrate who committed the case to the Court of Session being exclusively triable by it.

4. At trial, the appellant/accused abjured her guilt and pleaded false implication. After completion of the trial, the learned Second Additional Sessions Judge has convicted the appellant and sentenced her as mentioned above, hence this appeal.

5. Learned counsel for the appellant sanguinely submitted that none of the witnesses have supported the prosecution case. There is no evidence that the appellant had jumped into the Well with an intent to kill her daughter. It is submitted that it is evident from the statements of the prosecution witnesses that the deceased had jumped into Well to save her daughter. It is submitted that the learned trial Court has recorded conviction only on the basis of so-called dying declaration of the appellant, which is against the settled principle of law. It is also submitted that the statement of the appellant cannot be termed as her confession as was interpreted by the learned trial Court. On these premise, it is submitted that conviction of the appellant is not sustainable, therefore, he prays that the impugned judgment may be set-aside.

6. *Per contra*, learned counsel for the respondent/State submitted that, although the prosecution witnesses have not supported the prosecution case and they have turned hostile but the dying declaration was recorded by Naib Tahsildar, which can be considered as admission of the guilt by the appellant, therefore, he submitted that the conviction of the appellant recorded by the learned trial Court does not call for any interference in exercise of appellate jurisdiction.

7. Heard learned counsel for the parties and perused the record of the trial Court.

8. It is revealed from the record of the trial Court that the prosecution witness Rajesh (PW-1) has admitted that the appellant is his wife, who had narrated that daughter Ishika (deceased) while playing fell into Well and she jumped into Well to save her. He also admitted that in

that Well there are two rings (Pulley) for pulling water out and from that place a child may fell into Well. This witness has denied that he had narrated to the police that the appellant had jumped into Well taking along deceased. This witness has denied his police statement (Ex.P/7) to that extent.

9. Kasturi (PW-2), mother-in-law of the appellant, has stated that she does not know that how her grand daughter and daughter-in-law fell into Well. Lokesh (PW-3), Rajesh Dongerdiye (PW-4), Ramesh (PW-5), Vinod (PW-6). Madhu (PW-7), Laali (PW-8), Rajkumar (PW-9), Sirjat Singh (PW-10), Hemant (PW-11), Nanhu Pawar (PW-14) and Dayaram (PW-21) all have stated that the appellant as well as her daughter Ishika (deceased) were fell into Well but none of them have stated that the appellant had jumped into Well taking her daughter Ishika (deceased) with intent to kill the deceased and/or herself. All these witnesses have been declared hostile by the prosecution. They have denied their police statements. Manohar (PW-12) although has stated that the appellant and her husband Rajesh were living together peacefully for the last one year of their marriage, but after the birth of the daughter Ishika (deceased), ill-treatment was started with the appellant, however this witness has stated that he does not know how the appellant and the deceased had fallen into Well. This witness has also been declared hostile and he denied his police statement (Ex.P/20).

10. Hariom (PW-13) has stated about the arrest of the appellant. Constable Rohit Kushwaha (PW-15) has handed over the body of the deceased after postmortem to family members. Narendra Chilhate (PW-

16) has prepared the spot-map being Patwar. ASI Mahesh Mandani (PW-17) has registered Inquest intimation No.27/2022 on 05.03.2022.

11. Dr. Palav Amritphale (PW-18) has performed the postmortem of the deceased and also treated the appellant. Dr. Palav Amritphale (PW-18) has stated that the deceased died due to drowning which is corroborated by the postmortem report (Ex.P/13). The cause of death of the deceased has not been put to test.

12. ASI Randheer Singh (PW-20) and Inspector Sunil Lata (PW-22) both have investigated into the matter and have stated about the investigation carried out by them.

13. It is clear from the evidence adduced on record that none of the witnesses have supported the prosecution case so far as the role of the appellant is concerned. The learned trial Court has recorded conviction on the basis of the statement (Ex.P/29) of the appellant, which was recorded as dying declaration during her hospitalization on 05.03.2022, by the Naib Tahsildar Yachika Parteti (PW-19).

14. The learned trial Court has concluded that the statement of the appellant (Ex.P/29) can be treated as confessional statement and after referring several judgments of the Hon'ble Supreme Court, the learned trial Court has considered the statement (Ex.P/29) as confessional statement of the appellant and made basis of her conviction.

15. The statement (Ex.P/29) recorded by the Naib Tahsildar Yachika Parteti (PW-19) is purportedly a dying declaration of the appellant Jyoti, who has survived after giving such statement. Obviously, the statement (Ex.P/29) cannot be treated as 'dying declaration', in terms

of Section 32(1) of the Indian Evidence Act and the same can, at-best, be treated as previous statement, which can be used for the purpose of corroboration under Section 157 and for the contradiction under Section 155 of the Indian Evidence Act. If any such statement is recorded by a Metropolitan Magistrate or Judicial Magistrate, the same can be treated as statement under Section 164 of Cr.P.C., of-course, subject to fulfilment of other requisites thereof.

16. The Supreme Court has laid down this legal preposition in a catena of decisions. In **State of U.P. v. Veer Singh and others (2004) 10 SCC 117**, while restating the law laid down in **Ramprasad v. State of Maharashtra (1999) 5 SCC 30**, **Sunil Kumar v. State of M.P., (1997) 10 SCC 570** and **Gentela Vijayvardhan Rao v. State of A.P. (1996) 6 SCC 241**, has held as under:-

“5. It is trite law that when the maker of a purported dying declaration survives, the same is not statement under Section 32 of the Indian Evidence Act, 1872 (for short “the Evidence Act”) but is a statement in terms of Section 164 of the Code. It can be used under Section 157 of the Evidence Act for the purpose of corroboration and under Section 155 for the purpose of contradiction.”

17. In the present matter, the appellant, maker of the statement (Ex.P/29) is alive and charged with the offence confessed in the statement (Ex.P/29), thus, same can be said to be a confessional statement of the appellant, if in conformity with a valid confessional statement. A confessional statement is a judicial or extra-judicial depends upon its mode of recording. Learned trial Court has considered the statement of appellant

(Ex.P/29) as extra-judicial confession. However, a confessional statement must be acceptable in the eyes of law.

18. The Supreme Court, in the case of **S. Arul Raja Vs. State of Tamil Nadu (2010) 8 SCC 233** has summarised the legal proposition as under:-

“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.

15. Now, we may examine some judgments of this Court dealing with this aspect.

15.1 *In Balwinder Singh v. State of Punjab [1995 Supp. (4) SCC 259], this Court stated the principle that an extra-judicial confession, by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.*

15.2 *In Pakkirisamy v. State of T.N [(1997) 8 SCC 158], the Court held that*

“8.....It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.”

15.3 *Again in Kavita v. State of T.N [(1998) 6 SCC 108], the Court stated the dictum that*

“4. There is no doubt that convictions can be based on extrajudicial confession, but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon veracity of the witnesses to whom it is made.”

*15.4 While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in the case of **State of Rajasthan v. Raja Ram [(2003) 8 SCC 180]** stated the principle that;*

“19. 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 evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.”

The Court, further expressed the view that

“19.....Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses 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.....”

*15.5 In **Aloke Nath Dutta V. State of W.B [(2007) 12 SCC 230]**, the Court, while holding the placing of reliance on extra-judicial confession by the lower courts in absence of other corroborating material, as unjustified, observed:*

“87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.

89. *A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof.*”

15.6 Accepting the admissibility of the extra-judicial confession, the Court in the case of **Sansar Chand V. State of Rajasthan [(2010) 10 SCC 604]** held that :-

“29. 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. [Vide *Thimma and Thimma Raju V. State of Mysore*, *Mulk Raj Vs. State of U.P.*, *Sivakumar V. State* (SCC paras 40 and 41 : AIR paras 41 & 42) *Shiva Karam Payaswami Tewari V. State of Maharashtra and Mohd. Azad Vs. State of W.B.*]

“30. In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section of the Evidence Act, 1872.”

15.7 Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in the case of *Rameshbhai Chandubhai Rathod V. State of Gujarat [(2009) 5 SCC 740]* held as under :

“53. It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless, the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.”

15.8. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [Ref. Sk. Yusuf V. State of W.B [(2011) 11 SCC 754] and Pancho v. State of Haryana [(2011) 10 SCC 165].

The principles

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.*

19. The core question as to whether the statement (Ex.P/29) is a valid extra-judicial confession of the appellant needs to be answered in

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consonance with aforesaid principle of law. Naib Tahsildar Yachika Parteti (PW-19) has stated that on 05.03.2022 at about 10:24 a.m., she had recorded the statement of Jyoti (appellant). Yachika Parteti (PW-19) stated that on 05.03.2022 Station House Officer, Multai had sent a letter bearing No.00/Q/2022, thereafter she was proceeded to record dying declaration of the appellant at Community Health Centre Multai. The statement of appellant (Ex.P/29) read verbatim as under:-

मरणासन्न कथन

- “प्र.1 नाम क्या है आपका
उ. ज्योति।
प्र.2 पिता का नाम क्या है
उ. मनोहर डिगरसे।
प्र.3 पति का नाम क्या है
उ. राजेश।
प्र.4 उम्र कितनी है आपकी
उ. 28-29 के लगभग।
प्र.5 क्या हुआ है आपके साथ
उ. कुछ नहीं।
प्र.6 कुएं में कूदे थे आप?
उ. हाँ।
प्र.7 कुएं में क्यों कूदे?
उ. मैं खेत जा रही थी ऐसे दिमाग में आया कि अब जीना ही नहीं है।
प्र.8 अकेले कुएं में कूदे थे या बेटी भी थी?
उ. बेटी भी थी, इशिका।
प्र.9 किसी से झगडा हुआ?
उ. नहीं।
प्र.10 और कुछ कहना चाहती है?
उ. नहीं।”

20. Yachika Parteti (PW-19) has stated that Dr. Palav Amritphale (PW-18) had made a note that before recording of the statement and after recording of the statement, Jyoti was able to give consent. The ‘note’ has been made at the top and end of the statement

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(Ex.P/29) by the doctor concerned is as thus; “Patient is willing to give consent”. Dr. Palav Amritphale (PW-18) though stated that Naib Tahsildar had recorded statement of the appellant for which he had given opinion that the appellant was able to give statement, but in cross-examination, admitted that while recording statement (Ex.P/29) he had not asked whether the patient was in a position to give statement or not and he has written in English that 'Patient is willing to give consent', but he has not written that Jyoti is in fit mental condition for giving statement.

21. Naib Tahsildar Yachika Parteti (PW-19) in her cross-examination admitted that it has not been mentioned in the statement (Ex.P/29) that she had asked to doctor whether patient was able to give statement or not. She has stated that since the doctor concerned has written in English, therefore, she has not asked to doctor that what he has written and she did not try to know that what doctor has written.

22. Dr. Palav Amritphale (PW-18) has further stated that statement (Ex.P/29) was recorded in his presence, however Naib Tahsildar Yachika Parteti (PW-19) has stated that while recording of the statement (Ex.P/29) there was no other person except appellant and herself. She has admitted that she had not specifically asked to the appellant whether she jumped into well taking along her daughter Ishika. Yachika Parteti (PW-19) has admitted that at the time of recording of the statement, the appellant was lying on the bed. She was not able to give long answer and she was speaking slowly in low voice. Yachika Parteti (PW-19) has admitted that at the time of recording of the statement, daughter (deceased) of the appellant was lying beside Jyoti on bed and for that reason while

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giving statement (Ex.P/29) Jyoti was in agony due to death of her daughter. Naib Tahsildar Yachika Parteti (PW-19) has also admitted that it cannot be said that due to traumatic incident, whether the mental status of Jyoti was stable or not.

23. From a close scrutiny of statement of Naib Tahsildar Yachika Parteti (PW-19) it is revealed that while recording of the statement (Ex.P/29), the appellant was not in a free state of mind and therefore, whatever she had stated in her statement (Ex.P/29) cannot be considered as her confessional statement given by her with freewill and fit state of mind.

24. Seen as a whole, for two counts, the statement (Ex.P/29) cannot be trusted as the appellant's extra-judicial confession. Firstly, since the prosecution provided no other corroborative evidence, it is unsafe to convict the appellant solely based on statement (Ex.P/29) treating it as an extra-judicial confession and secondly, the statement (Ex.P/29) itself lacks the necessary ingredients for an offence under Section 302 of IPC, as it does not indicate the appellant intended to kill his daughter, Ishika (deceased).

25. In view of the above discourse, the conviction of the appellant recorded by the learned trial Court vide impugned judgment dated 31.01.2023 deserves to be and is hereby set-aside and the appellant is acquitted from the charge under Section 302 of IPC.

26. The appellant is in jail. She be set at liberty immediately, if not required in any other case.

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27. Record of the trial court along with a copy of this judgment be sent back forthwith.

(VIVEK AGARWAL)
JUDGE

(RAMKUMAR CHOUBEY)
JUDGE

Vin*