VINAYAK SHIVAJIRAO POL

v.

THE STATE OF MAHARASHTRA

JANUARY 22, 1998

[M.M. PUNCHHI, CJ. AND M. SRINIVASAN, J.]

Indian Penal Code, 1860—Sec., 302—Murder of wife—Extra Judicial Confession—Highly decomposed headless body recovered from well—Post Mortem report—Death due to haemorrhage—Confession that murder was committed by strangulation—Head of deceased recovered at the instance of appellant—Trial Court acquitting on the ground that Prosecution evidence ran counter to confessional statement—High Court convicting placing reliance on Statement of Confession—On appeal, held no ambiguity in the Extra Judicial Confession—No reliance can be placed on Post Mortem report—Hence High, Court justified in holding the appellant guilty of Murder—However, since it is not a rarest of rare case death sentence reduced to life imprisonment.

The appellant was convicted for an offence under Sec. 302 Indian Penal Code, 1860 and sentenced to death.

The appellant was a Sepoy in the Army. His wife, the deceased was not keeping well and the appellant had left her with his parents. Appellant was absent from duty for two days without intimation and gave an explanation to the authorities that he had gone to his sister's house. In the meanwhile the father of the deceased went to his daughter as he got a letter from her to come immediately. The deceased was not available and the parents of the appellant could not give any satisfactory explanation. After three days a headless body was found in a well in a highly decomposed state. The body was cremated without identification. The appellant made a confessional statement before his superior officers that he had killed his wife. The matter was informed to the police. The appellant and his friend, a co-accused were arrested. The police with the help of the appellant recovered the head of deceased from another well in the same village. Charges were framed against the appellant and his friend. The Post Mortem report stated that the death occurred due to haemorrhage by cutting off the head. However, in the confession statement the appellant has admitted that he killed his wife by strangling. The Trial Court acquitted the appellant on the ground that the

A evidence led by the prosecution ran counter to the extra judicial confession.

On appeal, the High Court relying upon the Statement of Confession and the recovery of head at the instance of the appellant, convicted him for an offence under Sec. 302 IPC and sentenced him to death. Hence, the present appeal.

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The contention of the appellant was that the Medical evidence were contrary to the statement of confession made and in the face of such contradictions the High Court ought not to have relied on the extra judicial confession.

C

Partly allowing the appeal, this Court

HELD : 1.1. The High Court was justified in holding the appellant guilty of committing the murder of his wife. [319-F]

1.2. There is no ambiguity in the Extra Judicial Confession Statement. D It shows that the appellant killed his wife. Both the Courts have found that the statement was made voluntarily by the appellant. The sequence of events shows that at the time when the appellant made the confession, neither he nor the military authorities had any knowledge of the recovery of the headless trunk of the appellant's wife. The military authorities were in no way biased E or inimical to the appellant. Nothing is brought out in the evidence which may indicate that the military officers had a motive for attributing any untruthful statement to the appellant. The statement has been proved by one of the officers to whom it was made. The plea that the statement was obtained by inducement and promise is not true. Thus it is open to the court to rest its conclusion on the basis of such statement and no corroboration is F necessary. [315-G-H; 316-A-B]

State of U.P. v. *M.K. Anthony,* AIR (1985) S.C. 48 and *Piara Singh and Ors.* v. *State of Punjab,* AIR (1977) 2274, referred to.

Nishikant Jha v. *The State of Bihar,* [1969] 1 S.C.C. 347; *Harchand* G *Singh & Another* v. *State of Haryana,* [1974] 3 S.C.C. 397; *Makhan Singh* v. *State of Punjab,* [1988] Supp. S.C.C. 526 and *Chhittar* v. *State of Rajasthan,* [1955] Supp. 4 S.C.C. 519, held inapplicable.

1.3. In the instant case apart from the statement of recovery there is a clinching circumstance against the appellant, viz., the head of the deceased H wife was recovered from another well situated in the land of another person

and the said recovery was made at the instance of the appellant. The said fact of the head being in another well was within the exclusive knowledge of the appellant and if he had not committed the murder he could not have shown the well in which the head was found. The High Court was, therefore, perfectly justified in relying upon the statement of confession and the recovery of head at the instance of the appellant for holding the appellant guilty of murder. [316-D-E] A B

2.1. There is no merit in the contention that the post mortem examination report stated that the death occurred due to haemorrhage by cutting off the head and that there is no evidence of strangling of the deceased by the appellant. Even if there had been any mark of strangling, the same would not be visible as the neck was cut. The body was found in such highly de-composed condition, it would not have been possible at all for the doctor, who conducted the post mortem, to have found anything relating to the strangling of the deceased by the appellant. When the post mortem was carried out the appellant had not made the confession. On seeing the headless trunk, normally and naturally, the doctor would have proceeded to conduct the post mortem on the footing that the death occurred on account of chopping of the head. In such a situation, the doctor expressed an opinion that death was due to haemorrhage but it is seen that in the post mortem report there is no reference to the symptoms which indicated such haemorrhage. In the circumstances no reliance can be placed on the opinion of the doctor who conducted the post mortem. [317-D-E-F-G] C D E

Manguli Dei v. *State of Orissa,* AIR (1989) Supreme Court 483, relied on.

Modi's Textbook of Medical Jurisprudence and Toxicology, edited by C.A. Franklin, Twenty first Edition and *Parikh's Text Book of Medical Jurisprudence and Toxicology* edited by Dr. C.K. Parikh and *Medical Jurisprudence and Toxicology* by John Glaister, referred to. F

2.2. The variation between the minor details contained in the statements of confession and the circumstances brought out in the evidence will not in any way effect the acceptability of the confession of the appellant that he killed his wife. [319-B] G

3. The present case is not a rarest of rare case warranting award of death sentence. The ends of justice would be met by reducing the sentence to one of imprisonment for life. Thus, the appellant is convicted for an H

A **offence under sec. 302 IPC and sentenced to imprisonment for life. [319-G]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 595 of 1997.

From the Judgment and Order dated 9.4.97/30.4.97 of the Bombay High
B Court in Criminal Appeal No. 645 of 1984.

Vijay Kotwal and S.R. Chitale, A.M. Khanwilkar, S.M. Jadhav and Abha K. Sharma, for the Appellant.

I.G. Shah, S.S. Shinde and OM Nargolkar, for the Respondent.

C

The following Judgment of the Court was delivered by :

SRINIVASAN, J. The pivotal question in this appeal is whether the extra judicial confession made by the appellant could form the basis of conviction under Section 302 I.P.C. The question was answered in the negative
D by the Additional Sessions Judge, Sangli but the High Court gave a contrary answer and reversed the judgment of the Court of Sessions. Thus, the appellant stood convicted and sentenced to death as the High Court opined that 'this case falls in the category of the gravest of grave and rarest in rare cases'. After hearing the appeal for some time, we decided that the death sentence awarded to the appellant may not be sustainable whether we accept or reject
E the appeal ultimately and passed an order on 6.1.98 that the appellant be taken out from the Death Cell and be put in the cell meant for life convicts till further orders. Thereafter we completed the hearing of the appeal.

2. The appellant was a sepoy in the Army at 14th Maratha Light
F Infantry, Aundh Camp, Pune. He married one Vimal of Hingangaon village in 1980 and had a female child about a year later. Vimal was not keeping good health and was found to be suffering from tuberculosis. She was advised complete bed rest for 6 to 7 months and avoid sexual intercourse at least for one year. The parents of the appellant were living in the village Tisangi. Vimal was sent back to her parents but some time later she was brought back by
G the appellant and left with his parents.

3. The appellant was allotted the duty of a guard at the residence of Commanding Officer at Ghorpadi, Pune for 24 hours in rotation in February, 1983. He was absent from his duty on 9th and 10th February and reported for duty on the 11th at 1.00 P.M. He gave an explanation for his absence to
H the authorities concerned that he had gone to his sister's house at Akurdi,

Pune. As it was found to be unsatisfactory, he was punished under the Army Act.

4. In the meanwhile on 10.2.83, Vimal's father went to Tisangi in response to her letter requesting him to come immediately. She was not available and the parents of the appellant could not give an explanation for her absence to his satisfaction. He went back to his village in a disgusted mood.

5. On 13.2.83 a headless dead body was found in a well in Pusegaon Village. The body was in a highly decomposed state. It was found that there was only a blouse on the trunk and both the legs were tied with a green cloth piece. Some injuries were found in the neck and the thumbs of the hands were found cut. Certain other fingers were also found half cut. After autopsy, search was made for the head but it could not be found. The fact was proclaimed by beat of drums in the nearby village so that the trunk of the body could be identified. But nobody could identify the same and the same was cremated.

6. On 17.2.83 the appellant approached some of the superior officers and confessed before them that he had killed his wife Vimal. He was told by them to put in writing whatever he wanted to say. He wrote out a confessional statement in Marathi language and signed below it. The writing was attested by four military officers. He was kept under watch by the higher authorities in the guard room. The military authorities informed the Superintendent of Police at Sangli about the confessional statement and sent a copy of the same to him. They were requested to contact the Superintended of Police, Satara as the offence was alleged to have been committed at Pusegaon in District Satara. The military authorities communicated to the Superintendent of Police the information on 22.2.83. The police commenced the investigation and obtained on 2.3.83 a warrant from the Judicial Magistrate, Kavathe-Mahankal for the arrest of the appellant. Pursuant to the same, he was arrested and produced before the Magistrate on 5.3.83. During the interrogation the appellant mentioned the name of his friend Baban Shankar Suryavanshi as his accomplice. The latter was also questioned and he offered to make discovery of certain articles namely a Kukhari and a steel box like a military box. The appellant himself offered to make discovery of the head of his wife Vimal and as per his statement the head was recovered from another well in the same village Pusegaon. Thereafter, the investigation was completed and charges were framed against the appellant and his friend.

7. The Court of Sessions recorded the following findings:

A I. The dead body was that of Vimal, the wife of the appellant whose death was homicidal.

II. The appellant had sufficient motive for killing his wife.

III. The extra judicial confession made by the appellant to the military B authorities was voluntary.

IV. The head of the deceased was discovered at the instance of the appellant.

V. The letter muddamal article 20 was written by the appellant to his C friend. However, the Court of Sessions took the view that the evidence led by the prosecution ran counter to the contents of the extra judicial confession and the same could not therefore be relied upon to convict the appellant. In that view, the Court of Sessions acquitted the accused.

8. On appeal, the High Court set aside the judgment of the trial court D and convicted the appellant for the offence under Section 302 I.P.C. He was sentenced to death. The High Court however confirmed the acquittal of the other accused.

9. Before proceeding further it is necessary to set out the statement of extra judicial confession made by the appellant to the military authorities. It E has been extracted in full in the judgment of the High Court as translated and placed before it. It reads as follows:

"I. Shipai No. 277/892, am giving in writing as to how I killed my wife as her behaviour was not good and I myself had caught her with another man.

F On 9th February in the afternoon at 4.00 p.m. I was on duty at Brigadier Saheb's Bungalow at Ghorpadi, Pune. From there I straightway came to bus stand and went to Satara by bus. While going I was carrying one steel box, one Kukari and one rug. With these luggage I reached home at 2.00 a.m. on 10th. After reaching home, I went to the place where my mother, father and G wife were sleeping. I woke up my wife. I did not allow anybody to talk. My wife said, "come, I will prepare tea for you. I told my mother that I am taking my wife and she should stay there only. Then, I came with my wife to the other home. After coming to the other home, I closed the outer door and also closed the inner door of the room. Then I pretended to sleep with my wife and pressed her neck. I pressed the neck till she died. After she was dead. H I put her in the tin box which I had taken with me and covered with rug. Then

at 2.30 a.m. I came to bus stop at the platu of Ghat Nagre which is 2-1/2 miles away from our village. Thus, in the morning at 5.30 a.m. I came to Nagare Fata by Bombay to Jat bus. At that spot within two minutes one truck came. I got into the truck and came to Miraj Railway Station at 10.00 a.m. on 10th. Again at 10.25 a.m. I boarded a train and got down at Koregaon. I went to Koregaon bus station in Bullock Cart. Then in the afternoon at 1.00 p.m. I went to Aundh Fata bus stop, which is 2 miles west of village Puregaon by bus. It was 3.30 in the afternoon. At that time I waited there till night 8 p.m. and after the vehicular and human traffic was stopped, I started my work. Earlier I had inspected the wells in the area, Then I carried the box to a gulch (Nala). After reaching the nala, I took out the dead body from the box and severed the head and both the thumbs. Then I put the body only in a gunny bag and went to a well. At the well I put two big stones in the gunny bag and tied the mouth closed of the gunny bag and throw it in the well. Then again I came back near the body. I wrapped the head in a cloth and with that head went near other well. Then I tied two stones with that head and throw it in the well. Then I tied the thumbs in a cloth and put them in pocket. I washed the box and kukri in the well. At that time some truck came from Puregaon. I came to Satara S.T. station at 10.30 p.m. at night in that truck. Then I removed the kukri from the box and kept it in the cloth bag which was with me. I left the box there only and came to W.C. at the Station. In the W.C. I throw the thumbs and kukari and flushed it. At Aundh Phata I burnt her clothes and mixed it in soil. And then at 11.00 p.m. I sat in the bus and got down at Pune on 11th at 1.00 a.m. Then I went for Guard. Then there was report. I told the Guard Commander that I had gone to my sister at Akurdi. Then on 14th at 12.00 noon I came to the Main Line. I had given the same statement to Company Commander on 16th.

This entire statement is absolutely true.

Shipai Vinayak Shivaji Pal No. 277/892

Sd/-
17/2/1983"

10. There is no ambiguity in the above statement. It shows that the appellant killed his wife. Both the Courts have found that the statement was made voluntarily by the appellant. The sequence of events shows that at the time when the appellant made a confession, neither he nor the military authorities had any knowledge of the recovery of the headless trunk of the appellant's wife. The military authorities were in no way biased or inimical to the appellant. Nothing is brought out in the evidence in respect of the military officers

A which may indicate that they had a motive for attributing an untruthful statement to the appellant. The statement has been proved by one of the officers to whom it was made. The said officer has been examined as PW 32. A perusal of the evidence shows that the vague plea raised by the appellant that the statement was obtained from him on inducement and promise is not true. In such circumstances it is open to the Court to rest its conclusion on the basis of such statement and no corroboration is necessary.

B

11. *In State of U.P.* v. *M.K. Anthony,* AIR (1985) S.C. 48 an extra judicial confession was made by the accused to his friend. The Court found that the statement was unambiguous and unmistakably conveyed that the accused was the perpetrator of the crime. The Court also found that the testimony of the friend was truthful, reliable and trustworthy. It was therefore held by this Court that the conviction of the accused on such extra judicial confession was proper and no corroboration was necessary. It was also held that much importance should not be given to minor discrepancies and technical errors.

C

D 12. In the present case apart from the statement of recovery there is a clinching circumstance against the appellant. That is, the head of the deceased wife was recovered from another well situated in the land of another person and the said recovery was made at the instance of the appellant. The said fact of the head being in another well was within the exclusive knowledge of the appellant and if he had not committed the murder he could not have shown the well in which the head was found. The High Court was therefore perfectly justified in relying upon the statement of confession and the recovery of the head at the instance of the appellant for holding that the appellant was guilty of murder.

E

F 13. The High Court is also right in placing reliance on muddamal article 20, a letter written by the appellant to his friend who was the second accused which indicated that there was some evil plan between the two.

14. Learned counsel for the appellant strenuously contended that the High Court is not justified in upsetting the order of acquittal passed by the trial court when the same was based on several reasons set out therein. It is also argued that none of the reasons given by the trial court has been independently considered by the High Court. According to learned counsel each and every reason found in the judgment of the trial court must be dealt with by the High Court before it reverses the conclusion of the trial court. It is also argued that the medical evidence as well as the other circumstantial evidence are contrary to the contents of the statement of confession made

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H

by the appellant and in the face of such contradictions the Court ought not to have relied on the extra judicial confession. It is further contended that the High Court has infact accepted one part of the statement of confession finding it to be true. According to the learned counsel such a course is not open to the High Court.

15. We have carefully gone through the judgment of both the Courts below and also the evidence on record. The trial court has given various reasons for not accepting the extra-judicial confession but all are on the premise that the other evidence on record is contrary thereto. The High Court has relied upon the crux of the statement of confession and proceeded on the footing that the other details mentioned in the statement are not of much relevance and even if there is a variation between such details and the other evidence on record, it would be of no consequence. We are in agreement with the view taken by the High Court.

16. The main contention of the appellant is that in the post mortem examination the opinion expressed by the doctor is that the death occurred due to haemorrhage by cutting off the head and that there is no evidence of the strangling of the deceased by the appellant. There is no merit in this contention. Even if there had been any mark of strangling, the same would not be visible as the neck was cut. The body was found in such highly decomposed condition, it would not have been possible at all for the doctor, who conducted the post mortem, to have found anything relating to the strangling of the deceased by the appellant. Further, one important factor should be kept in mind when we consider the evidence afforded by the post mortem report. When the post mortem was carried out, the appellant had not made the confession. On seeing the headless trunk, normally and naturally, the doctor would have proceeded to conduct the post mortem on the footing that the death occurred on account of the chopping of the head. In such a situation, the doctor expressed an opinion that death was due to haemorrhage but it is seen that in the post mortem report there is no reference to the symptoms which indicated such haemorrhage. The same reasoning would apply to the opinion of the doctor that the injuries found on the body were ante mortem.

17. Our attention has been drawn to some of the passages in the Modi's Textbook of Medical Jurisprudence and Toxicology, edited by C.A. Franklin, Twenty-first Edition and also Parikh's Text Book of Medical Jurisprudence and Toxicology edited by Dr. C.K. Parikh. None of the passages is of any help

in the present case in view of the facts mentioned above and in particular the circumstance that the body was highly de-composed when it was discovered. Reference has also been made to the following passage in the Text Book on Medical Jurisprudence and Toxicology by John Glaister:

> "Ante-mortem and post-mortem bruises.
>
> The signs which are indicative of ante-mortem production of bruises are swelling of the tissues, discoloration of the skin, extravasation of blood into the true skin and subcutaneous tissues, with infiltration. When bruise is well developed, an examiner is justified in assuming the view that it was produced during life. Nevertheless for medico-legal purposes, a microscopical examination should be made to verify the presence of infiltrated blood. Since infiltration is possible only while the heart is beating, this sign is conclusive that the injury was produced during life. While molecular life remains in the tissues, considerable violence applied to a dead body with a blunt instrument will produce a slight degree of extravasation, but never to the same extent as during life and infiltration of the tissues will be absent.
>
> Suspected areas of bruising should always be incised to differentiate them from colour marks due to hypostasis, since both conditions may coexist in the same region of the body. In bruising, extravasated blood is present, but in hypostasis the severed small vessels are filled with blood and extravasation is absent."

18. There is nothing on record to show that the post mortem examination was of the type mentioned in the above passage. In such circumstances we are unable to place any reliance on the opinion of the doctor who conducted the post mortem.

19. *In Manquli Dei* v. *State of Orissa,* AIR (1989) Supreme Court 483 the wife killed her husband and buried the dead body in the house. According to her confessional statement she gave four axe blows on the head of the deceased. The dead body was recovered according to her statement but the injuries on the dead body were not visible as it was highly de-composed. The Court held that the confession could not be rejected merely on the ground that only one simple injury was stated in the post mortem report. The facts in the present case are similar and the same principle will apply.

20. There is no substance in the contention that the steel box discovered

on the statement of the second accused would not be sufficient to place the dead body inside and carry it. Comments are also made that the discovery of the steel box and kukhari belies the statement of the appellant that he had discarded the same before returning to his place of duty. A card-board model of the steel trunk was produced before us. In our view that size of the trunk is quite sufficient to place the body of the deceased inside by folding it which could be possible immediately after the death. In any event the variation between the minor details contained in the statement of confession and the circumstances brought out in the evidence will not in any way affect the acceptability of the confession of the appellant that he killed his wife.

21. Learned counsel for the appellant has referred to the decisions in *Nishi Kant Jha* v. *The State of Bihar,* [1969] 1 S.C.C. 347; *Harchand Singh & Another* v. *State of Haryana,* [1974] 3 S.C.C. 397; *Makhan Singh* v. *State of Punjab,* [1988] Supp. S.C.C. 526 and *Chhittar* v. *State of Rajasthan,* [1995] Supp. 4 S.C.C. 519. None of the rulings is of any help to the appellant as the facts therein are entirely different. The principles on which extra-judicial confession could form the basis of a conviction are well settled. We have already referred to the *judgment in State of U.P.* v. *M.K. Anthony,* (Supra) and *Manquli Dei* v. *State of Orissa,* (supra). We may usefully add the decision in *Piara Singh and others,* v. *State of Punjab,* AIR (1977) S.C. 2274. In that case it was held that law does not require that the evidence of an extra judicial confession should in all cases be corroborated and where such confession was proved by an independent witness who was a responsible officer and who bore no animus against the accused, there was hardly any justification to dis-believe the same.

22. In the result we have no hesitation to uphold the judgment of the High Court in so far as it finds the appellant to be guilty of committing the murder of his wife. The conviction is therefore upheld.

23. However, we are not satisfied that this is a rarest of rare cases in order to warrant award of death sentence to the appellant. The ends of justice would be met by reducing the sentence to one of imprisonment for life. The appeal is allowed to that extent and the sentence awarded to the appellant is altered into one of imprisonment for life.

S.V.K.I. Appeal allowed.