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STATE OF KARNATAKA

v

M.N. RAMDAS

SEPTEMBER 5, 2002

B

[RAJENDRA BABU AND P. VENKATARAMA REDDI, JJ.]

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*Evidence Act, 1872—Extra-judicial confession—Made before a person who has no reason to falsely implicate the accused and his testimony stands corroborated—Evidentiary value of—Held, such confession can be relied on—On facts, trial Court convicting the accused, however, High Court acquitting him—On appeal held, since there is clinching evidence along with extra judicial confession made by the accused to establish his guilt, High Court erred in setting aside the conviction.*

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*Criminal Trial :*

*Prosecution case—Reliance of—When sufficient evidence to show accused committing murder but not as to motive—Held, prosecution case not vitiated on account of this.*

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**According to the prosecution, respondent-accused murdered his companion by inflicting injuries with chopper. It is alleged that respondent-accused and his companion checked in at a Lodge where murder was committed. Respondent-accused made extra-judicial confession before PW2 who was sitting at the counter of the Lodge, that he had killed his companion. PW2 informed PW3-father of proprietor of the Lodge who then informed the Police. Sub-Inspector found respondent-accused in the room by the side of the dead body. Trial Court convicted respondent-accused. However, High Court set aside the conviction. Hence the present appeal.**

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**Allowing the appeal, the Court**

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**HELD: 1. The approach of High Court is perverse as it has set aside the conviction recorded by trial court on untenable and irrelevant grounds. It is not reasonably possible to give benefit of doubt to the accused, as the evidence is so clinching. None of the reasons given by the High Court are tenable. On the basis of evidence on record it was not reasonably possible**

to take the view which the High Court did. Hence the judgment of the High Court is set aside and conviction and sentence of the accused is restored. [119-H; 120-A; 122-B-C] A

2. The unnatural conduct on the part of the accused in committing the murder, immediately confessing it to a stranger and then remaining in the lodge after the incident will not necessarily shake the veracity of prosecution witnesses testimony but will put the Court on guard to get the assurance of truth in the prosecution case by corroborative evidence including circumstantial factors. There need not be astute reluctance on the part of the court to accept the extra-judicial confession. Further the evidence of PW3 corroborates the version of PW2 and both these witnesses have no reason to falsely implicate the accused. That apart, the circumstances referred to by the trial Court are almost clinching and lend assurance to the correctness of the version of PW2. [119-A-C] B C

*Rahim Beg and Anr. v. State of U.P.*, [1972] 3 SCC 759, referred to.

*Gura Singh v. State of Rajasthan*, [2001] 2 SCC 205, relied on. D

3. There was no clinching material where exactly the incident took place-whether in first floor or second floor. This alleged discrepancy does not throw an iota of doubt on the prosecution case. [120-B-C]

4. The last seen evidence cannot be discredited on the basis that the hotel register was not produced in order to establish that the accused and the deceased stayed together in the room. [120-D-G] E

5. Accused was injured and sent to the hospital, but neither the injuries were explained nor examined by the doctor. This lapse on the part of the prosecution by itself does not demolish the prosecution case, the omission on the part of the prosecution to produce evidence as to the nature of injuries received by the accused is not really material in the circumstances of the case. [121-B-D] F

6. The weapon-chopper, found on the table in the room contained human blood as per the chemical analysis report, was not sent to finger print expert. Even if it is considered a lapse in the investigation, it will not cast a cloud of doubt on the prosecution case. [121-D-E] G

7. One of the prosecution witnesses spoke about the wearing of the seized blood stained clothes by the accused. Thus High Court's observation H

**A** that none of witnesses spoke about it is factually incorrect. [121-F]

**B** 8. When there is abundant evidence to show that the accused and the accused alone would have committed the murder, the absence of proof of motive does not vitiate the prosecution case. Thus the fact that the prosecution did not adduce satisfactory evidence on the motive aspect is not sufficient to throw out the prosecution case as unreliable.

[121-G, H; 122-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 602/1993,

**C** From the Judgment and Order dated 11.3.1993 of the High Court of Karnataka at Bangalore in Crl. A. No. 211 of 1991.

M. Veerappa, for the Appellant.

**D** Devesh Singh, (AC), Amit Singh and Ms. Pareena Swaup, for the Respondent.

The Judgment of the Court was delivered by

**E** **P. VENKATARAMA REDDI, J.** This appeal by special leave filed by the State is against the judgment of the High Court of Karnataka setting aside the judgment of the Sessions Court, Mysore and acquitting the respondent herein of the charge under S. 302 IPC. The respondent was charged of committing murder of his companion by name Ananthu by inflicting injuries with a chopper on the afternoon of 28.6.1988 at a room in 'Kucheta lodge' in Mysore. According to the prosecution, the accused and the deceased who stayed in the house of PW 4 on the day prior to the day of occurrence came together to Mysore on the next day i.e. 28.6.1988. The accused came to the house of PW 4 to meet the deceased Ananthu who was related to him. The accused and the deceased checked in at Kucheta lodge in Mysore at about 1.30 P.M. on 28.6.1988. At that time PW2 who was a friend of the proprietor of the lodge and who used to stay in the lodge during his visits to Mysore to attend to his contract work was at the counter of the hotel. According to **G** PW 2, the manager by name Raju while leaving for food requested him to be at the counter. Entries were made in the lodge register and a receipt P1 was passed on to the accused for the cash received. It transpires from the evidence that the name written in the hotel register and the receipt was 'H.S. Ramesh'. The receipt which is in a printed form in English was filled up by **H** the deceased as PW 2 did not know English. At about 4.15 P.M. when PW

2 was sitting at the counter along with the room boy Manjunath, the accused came and told him that he had killed Ananthu and he should telephone to the police. At that time he was wearing only a pant and his body was stained with blood. Then, he sent the room boy Manjunath along with the accused to the room to see what had happened. Manjunath came back leaving the accused in room and closing it from outside. Manjunath reported to PW 2 that murder had taken place and that he may telephone to the owner of the lodge. Then, he contacted the proprietor's father by name Jugga Raju (PW 3) over telephone and informed him that some 'Galata' (untoward incident) had taken place in the lodge and requested him to come down to the lodge. PW 3 came to the lodge immediately and got a feed back of the event from PW 2. PW 3 then contacted the police and informed them that a murder had taken place in room No. 7 without naming the victim or the assailant. Then, the police Sub-inspector PW 12 accompanied by police personnel reached the lodge. He entered room No.7 in second floor by opening the bolt. He found the accused sitting on the cot. A dead body was lying by the side of the cot in a pool of blood. There were injuries on the neck and the face and a blood stained chopper was found on the table. He arrested the accused who gave his name as Ramdas and he sent the accused to the police station. PW 12 recorded the statement of room boy Manjunath at the lodge. That statement signed by Manjunath is Ex. P 10. and it was treated as complaint. PW 12 returned to the police station at about 5 P.M. and registered the crime under Section 302 IPC and submitted FIR Ex. P 11 to the Magistrate and superior officers. Then, PW 10 who was working as Circle Inspector of police took over further investigation. He proceeded to the place of occurrence and drew up spot Mahajar in the presence of Panchas PW 5 and another. He seized various articles in the room including blood stained bed sheets and pillow covers, bushshirt of the deceased, blood stained chopper etc. Then, in the presence of the Panchas, he held inquest over the dead body. During inquest he examined PWs 2 and 3. The inquest report is Ex. P 3. He sent the dead body for post-mortem examination. According to PW 10 the accused was sent with a requisition to the hospital through a police constable as he sustained minor injuries. After the accused returned from the hospital PW 10 seized his clothes M.O. 13 to 15 in the presence of Panch witness PW 7 after providing alternative clothing to him. The seized articles were sent to the Forensic Laboratory, Bangalore. The chemical analysis & Serology reports (P 9 and P 8) confirmed the presence of human blood stains on various articles including M.O. 6 and clothes. PW 10 deposed that during investigation it was disclosed that there was a scuffle between the accused and the deceased.

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**A** PW 1, who is the wife of the deceased, stated that one Ranga Raju who is her husband's paternal aunt's son is the owner of the land adjacent to their land and her husband and Ranga Raju were often quarrelling in connection with the land dispute. She further stated that Ranga Raju's elder brother's son is the accused. She also stated in somewhat vague terms that "due to land dispute, there was ill-will between my husband and accused". She identified the handwriting of her husband on Ex. P1 which was issued in the alleged name of H.S. Ramesh. She also identified clothes on the body of the deceased. **B** Moreover, she stated that the police showed her the hotel register in which the name H.S. Ramesh was found and that name was also written with the hand of her husband.

**C** PW 6 is the Professor and Head of Department of Forensic Science in Government Medical College. He conducted post-mortem examination of the dead body on the night of 29.6.1988 as per the requisition received from the police on the previous day. Ex. P4 is the post-mortem report. PW 6 found six incised wounds on the face and neck apart from many other superficial incised **D** wounds and abrasions on various parts of the body. Incised wounds 1 to 6, according to PW 6, looked like multiple chop wounds which cut the neck tissues up to the trachea. The injury on the right side of the neck was deep seated, cutting the muscles and blood vessels of the neck. The outer part of the third cervical vertebrae was found cut upto the body. PW 6 expressed the **E** opinion that the death was due to bleeding and shock as a result of chop injuries on the right side of the neck caused by a heavy sharp cutting weapon. The seized chopper MO 6 was examined by him and he gave the opinion that the injuries could have been caused by a weapon like MO 6 and some of the minor injuries could be caused by slashing of the cutting edge of MO 6.

**F** The learned Sessions Judge relied on the following circumstances for coming to the conclusion that the accused had committed crime :

**G** 1. As per the evidence of PW 4, wife of the deceased, on the day of the occurrence the deceased accompanied by the accused left her house in a village to Mysore. The evidence of PW 2 reveals that the accused and the deceased hired a room in the lodge at about 1.30 P.M. Ex. P.1 (cash receipt) filled up by the deceased was issued by PW 2 who was incharge of the counter at that time. PW 2 had last seen them going to the allotted room i.e. room No. 7.

**H** 2. The deceased was found murdered in the room by 4.15 P.M.

3. When the door of room No. 7 was opened by the police, accused was sitting on the cot by the side of the dead body, as seen from the evidence of PWs 2 and 10. A
4. In the room the blood stained chopper by which the injuries could have been inflicted (as per the medical evidence) was found. The blood stained clothes of the accused were seized. The chemical analysis report reveals that they contained human blood. B
5. The learned trial Judge referred to the fact that Manjunath, the room boy, whose statement was treated as FIR could not be examined as his whereabouts were not known, as disclosed in the evidence of PW 10. C

With regard to the extra judicial confession, the trial Court neither discarded nor relied upon it apparently for the reason that according to the decision cited before him - *Rahim Beg and Anr. v. State of U.P.*, [1972] 3 SCC 759 such confession is a weak evidence especially when it is made before a person with whom the accused had no previous contacts. The learned Sessions Judge observed that even if the extra judicial confession is eschewed from consideration the other circumstances referred to supra are sufficient to establish the guilt of the accused. D

The learned Sessions Judge concluded that the circumstances form a complete chain and rule out reasonable likelihood of innocence of the accused. E

Before we proceed to the consideration of the High Court's judgment, we deem it appropriate to refer to a recent decision of this Court in *Gura Singh v. State of Rajasthan*, [2001] 2 SCC 205 wherein the evidentiary value to be attached to the extra judicial confession has been explained thus : F

"It is settled position of law that extra-judicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra-judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* this Court again in *Maghar Singh v. State of Punjab* held that the evidence in the form of extra-judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of H

- A such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In *Narayan Singh v. State of M.P.* this Court cautioned that it is not open to the
- B court trying the criminal case to start with a presumption that extra-judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The retraction of extra-judicial confession which is a usual phenomenon in criminal cases would be itself not weaken the case of
- C the prosecution based upon such a confession. In *Kishore Chand V. State of H.P.* this Court held that an unambiguous extra-judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to
- D be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired
- E by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinized.”
- F Examined in the light of the enunciation of law as above, we are of the view that the testimony of PW 2 as regards the confession made by the accused at the earliest point of time is such as to inspire confidence in the mind of the Court. PW 2 may be a stranger to the accused but it should also be noted that there is absolutely no reason why he should unnecessarily implicate the accused. Without any loss of time he brought to the notice of
- G PW 3 and the police the factum of confession made by the accused soon after the crime. His version in this regard is supported by PW 3 who, being the father of the proprietor of the lodge, came to the lodge immediately after receiving the phone call from PW 2. The conduct of the accused in committing the murder and immediately revealing this fact to a stranger like PW 2 may
- H not be consistent with the ordinary human conduct. It may be difficult to

speculate as to what prompted the accused to confess the commission of crime before PW 2 and to remain in the lodge after the incident. But, on that account, there need not be astute reluctance on the part of the Court to accept the extra-judicial confession. The unnatural conduct on the part of the accused will not necessarily shake the veracity of PW 2's testimony but it will put the Court on guard to get the assurance of truth in the prosecution case by corroborative evidence including circumstantial factors. We have before us the evidence of PW 3 who corroborates the version of PW 2 and both these witnesses have no reason to falsely implicate the accused. That apart, the circumstances referred to by the trial Court are almost clinching and lend assurance to the correctness of the version of PW 2.

We shall now come to grips to the reasons put forward by the High Court in acquitting the accused. The following are the reasons given by the High Court :

1. There is no clinching material where exactly the incident took place whether in first floor or second floor. PW 2 stated that room No. 7 is in first floor whereas in Ext P.10, room No.7 is said to be in second floor.
2. The extra-judicial confession was not communicated to the police or to the proprietor of the lodge at the earliest point of time. The telephonic message was only to the effect that an untoward incident had happened.
3. Having regard to the variation in the evidence of PWs 2 and 3 the confession becomes doubtful.
4. The hotel register was not produced in Court to establish that the accused and deceased stayed together in the room. Hence, the last seen evidence cannot be given any weight.
5. Though the accused was injured and sent to the hospital, the injuries were not explained nor the doctor examined.
6. The chopper found on the table was not sent to finger print expert.
7. None spoke about the wearing of the seized shirt and baniyan by the accused.
8. No motive is established.

None of the above reasons, in our view, are tenable. On the basis of

A evidence on record it was not reasonably possible to take the view which the High Court did. We shall now proceed to discuss the reasons given by the High Court in order to see whether the conclusions of the High Court are perverse or there is scope to take more than one view.

B First, about the place of incident. A doubt was entertained by the High Court as regards the place of occurrence, when there was no room for such doubt. The prosecution evidence is consistent that the murder took place in room No. 7 of the lodge. Whether it be in the first floor or the second floor is not really material. The alleged discrepancy as to the location of the room does not throw an iota of doubt on the prosecution case. PW 2 who was giving evidence after more than two years may not have recollected whether room No. 7 was in the first floor or the second floor, especially when he is not the proprietor or manager of the lodge. There is over-whelming evidence to show that the occurrence took place in room No. 7.

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D Next, coming to extra judicial confession, we searched in vain for any variation in the versions of PWs 2 and 3 which may have bearing on the factum of making confession before PW 2; but, we could find nothing. The non-mention of the confessional statement by PW 2 when he telephoned to PW 3 or PW 3 when he contacted the police over phone is not at all a factor which casts a reasonable doubt on the version of PW 2. Having regard to the fact that they were expected to reach the lodge within a few minutes, such details could be more appropriately narrated in person rather than wasting time on phone. Such conduct is quite consistent with ordinary human conduct. The time lag between the telephonic contact and the arrival of PW 3 and the police is less than half an hour, as the evidence on record reveals. It is too much to think that PW 2 entertained the idea of concocting extra judicial confession within those few minutes. The view taken by the High Court in this regard is wholly perverse.

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G The last seen evidence cannot be discredited on the basis that the hotel register was not produced in order to establish that the accused and the deceased hired a room in the hotel. In the face of the undeniable fact that the name entered in the cash receipt (Ex. P1) and in the hotel register is a fictitious name 'H.S. Ramesh', the production of hotel register could not have made any difference. The fact remains that PW 2 identified the accused and the deceased as the persons who took the room a few hours before the incident and to whom the receipt was passed on. The hand-writing of the deceased on Ex. P-1 was identified by his wife P.W.4 - an educated lady.

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Then, we have the clear evidence to the effect that the accused was found in the room by the side of the dead body. All these relevant facts were overlooked by the High Court.

In regard to the injuries on the accused, it is true that PW 10 the I.O. stated that minor injuries were found on the person of the accused and, therefore, he sent the accused with a requisition to the hospital. No doubt, the prosecution could have examined the Doctor or produced the medical examination report. But, this lapse on the part of the prosecution by itself does not demolish the prosecution case. The presence of injuries may at best suggest that the possibility of some scuffle within the room cannot be ruled out. But, when the accused had not set up the plea of self-defence or any other plausible explanation for the unnatural death of the deceased though he was the only person in the know of things, the non-production of evidence as to the nature of injuries received by the accused is not really material. The omission on the part of the prosecution does not in any way weaken the case against the accused.

The weapon - MO 6, found on the table in the room contained human blood as per the chemical analysis report. If the finger prints of the accused could be traced thereon that would have provided an additional piece of evidence to connect the accused with the crime. It is doubtful whether blood-soaked chopper, if analysed by the finger print expert, could have given any clues as to finger prints. Be that as it may, even if it is considered a lapse in the investigation, that will not cast a cloud of doubt on the prosecution case.

The next observation of High Court that none of witnesses spoke to the fact that the accused was wearing the seized shirt and banian is factually incorrect. The Panch witness PW 7 spoke to the seizure of the blood stained clothes which the accused was wearing at the police station. MOs 13 to 15 are the blood stained clothes and they were sent for chemical analysis.

As regards the motive, it is true, as vehemently contended by the learned Amicus Curiae that the prosecution evidence is not quite satisfactory. A bald statement that there was a land dispute between the deceased and the accused was made by PW 1 the wife of the deceased. She gave a somewhat detailed version in so far as the enmity between Ranga Raju who is a relation of the accused and the deceased, but, that is really not material. The fact that the prosecution did not adduce satisfactory evidence on the motive aspect, in our view, is not sufficient to throw out the prosecution case as unreliable. When there is abundant evidence to show that the accused and the accused

A alone would have committed the murder, the absence of proof of motive does not vitiate the prosecution case.

B For all these reasons, we are of the undoubted view that the approach of the High Court is perverse as it has set aside the conviction recorded by the Trial Court on untenable and irrelevant grounds. It is not reasonably possible to give benefit of doubt to the accused, as the evidence is so clinching. We, therefore, set aside the judgment of the High Court and restore the conviction and sentence given by the Sessions Court. The respondent accused shall serve the remaining period of imprisonment as per the judgment of the Trial Court. The appeal is allowed. We place on record our appreciation of the valuable services rendered by Shri Devesh Singh, Amicus Curiae.

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N.J.

Appeal allowed.