

[2011] 4 S.C.R. 15

CHANDRA BONIA
v.
STATE OF ASSAM
(Criminal Appeal No. 131 of 2006)

MARCH 30, 2011

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]

Penal Code, 1860 – s. 302 – Double murder – Conviction and sentence by the courts below – On basis of the extra-judicial confession made by accused before prosecution witness and recovery of the murder weapon at the instance of the accused before Investigating Officer – On appeal, held: Extra-judicial confession is a very weak piece of evidence and ordinarily a conviction solely on the basis of such evidence cannot be maintained – However, in the instant case, the extra-judicial confession was made by accused to the prosecution witness in a different background inasmuch as the accused suspected that he had been identified by the witness and he returned to warn her not to divulge any information to anyone – Statement of the prosecution witness recorded u/s. 164 Cr.P.C is almost in identical terms – The very proximity of the murder and the extra-judicial confession made to the prosecution witness shows that the confession is reliable – Also, the alleged murder weapon, had been recovered at the instance of the accused – Though, independent witnesses of the recovery did not support the prosecution, but no reason to doubt the evidence of the Investigating Officer – Thus, prosecution case proved beyond reasonable doubt – Evidence – Extra-judicial confession.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 131 of 2006.

From the Judgment & Order dated 24.8.2001 of the High

A Court of Gauhati at Gauhati in Criminal Appeal No. 170 of 2000.

Praneet Ranjan (A.C.) Rranay Ranjan, Hemant Kr. Yadav, Rajesh Mishra for the Appellant.

B Avijit Roy Corporate Law Group for the Respondent.

The following Order of the Court was delivered

O R D E R

C This appeal against the conviction has been filed against the concurrent findings recorded by the trial court and the High Court for a double murder committed on 7th October, 1990 for which the appellant was sentenced for life on two counts, both sentences to run concurrently.

D As per the prosecution story, Somra Munda and Agnash Munda, the father and brother of the first informant were murdered during the night of 7th October, 1990 in their house. The First Information Report was lodged by Chukhnu Munda at Police Station Marian on the 8th October, 1990 alleging that during his absence from the house some persons had murdered his father and younger brother. During the course of the investigation, the police recorded the statement of various witnesses including PW 1 Pradip Das and PW 2 Niran Bonia (who were both declared hostile), PW 5, the Medical Officer who had conducted the post mortem on the two dead bodies, PW 6 the informant and PW 7 Baloni Bawri, who was a neighbour of the deceased, and to whom the accused had made an extra judicial confession on the date of the murder itself and PW 12 the Investigating Officer who was also a witness to the recovery of the murder weapon at the instance of the accused. The trial court and the High Court have both noticed that as the solitary eye witness had died and the other two material witnesses PW 1 and PW 2 had been declared hostile, the prosecution story rested exclusively on the confession made by the accused to PW 7 and the factum of

recovery of the dao at the instance of the accused before PW 12 the Investigating Officer.

At the hearing before us today, Mr. Praneet Ranjan, the learned Amicus Curiae for the accused appellant has argued that the only evidence against the accused was the extra judicial confession made before PW 7 and as this evidence was a weak kind of evidence, the conviction of the appellant could not be maintained. He has further submitted that police had, in fact, used third degree methods and tortured and threatened the witnesses to give false evidence and as such the case against the appellant appeared to be a concocted one.

Mr. Avijit Roy, the learned counsel for the State of Assam, however, has supported the judgments of the courts below.

It is true that an extra judicial confession is a very weak piece of evidence and ordinarily a conviction solely on the basis of such evidence cannot be maintained. The confession, made by the appellant to PW 7, however, falls in a different category. A reading of the evidence of PW 7 clearly reveals that her house was about 100 yards away from the murder site and that when she had come out from her house to throw the starch out of the cooked rice, she had seen three persons running away from the house of the deceased and that a little later, the appellant - accused had come to her house carrying a dao and addressing her as Didi had told her that he had murdered two persons and cautioned her not to disclose this fact to anybody otherwise she too would be killed, and on account of fear, she and her husband had left their residence and shifted to some other place. We also see that the statement of PW 7 recorded under Section 164 Cr.P.C is almost in identical terms. It is therefore evident that the extra judicial confession was made in a different background in as much that as the appellant suspected that he had been identified by the witness he had returned to warn her not to divulge any information to anyone. The very proximity of the murder and the extra judicial confession made to PW 7 speaks volumes as to its authenticity.

A We also see from the record that the alleged murder weapon, a dao, had been recovered at the instance of the appellant. It is true that the independent witnesses of the recovery have not supported the prosecution, but we have no reason to doubt the evidence of PW 12 on this score.

B On an overall assessment of the facts the prosecution story is proved beyond reasonable doubt.

C We thus find no merit in this appeal and the same is dismissed.

The fee of the Amicus Curiae is fixed at Rs.7000/-.

N.J.

Appeal dismissed.