

RAM LAL

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v.

STATE OF HIMACHAL PRADESH

(Criminal Appeal No. 576 of 2010)

OCTOBER 03, 2018

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[R. BANUMATHI AND INDIRA BANERJEE, JJ.]

Evidence – Extra-judicial confession – Evidentiary value of – Appellant-peon with the Bank was assigned the job of Cash Clerk – His job was to receive money from the account holders for depositing in their Saving Bank accounts – However, he used to make entries in their pass books but, would not account money in the account books of the bank nor did he pass it to the cashier and thus, caused wrongful loss to the bank to the tune of Rs.38,500/- – Appellant convicted by Trial Court as also by the High Court – Plea of appellant that he did not voluntarily make any confession statement and the same could not have been made the basis for conviction – Held: Extra-judicial confession is a weak piece of evidence and the Court must ensure that the same inspires confidence and is corroborated by other prosecution evidence – If the Court is satisfied that the confession is voluntary, conviction can be based upon the same – Mere allegation of threat or inducement is not enough – In the present case, the trial court as well as the High Court concurrently held that the confession statements were voluntarily made and that the same can form the basis for conviction – No ground warranting interference with the said concurrent findings – Conviction of the appellant u/s.13(1)(c) r/w s.13(2), 1988 Act and sentence of imprisonment of two years is confirmed – Conviction u/ss.477-A and 409, IPC is also confirmed – However, since the occurrence was of the year 1992-94, considering the passage of time and the facts and circumstances of the case, the sentence of imprisonment imposed on the appellant u/s.409, IPC is reduced from five to three years – Prevention of Corruption Act, 1988 – ss.13(1)(c) read with Section 13(2) – Penal Code, 1860 – ss.409 and 477-A.

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A **Partly allowing the appeals, the Court**

HELD: 1.1 Extra-judicial confession is a weak piece of evidence and the court must ensure that the same inspires confidence and is corroborated by other prosecution evidence. In order to accept extra-judicial confession, it must be voluntary and must inspire confidence. If the Court is satisfied that the extra-judicial confession is voluntary, it can be acted upon to base the conviction. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra-judicial confession of accused need not in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated. [Paras 13, 14] [864-B-C; 865-E-F]

1.2 If the court is satisfied that the confession is voluntary, the conviction can be based upon the same. Rule of Prudence does not require that each and every circumstance mentioned in the confession with regard to the participation of the accused must be separately and independently corroborated. In the case at hand, as pointed out by the trial court as well as by the High Court, PW-2 and PW-3 were the senior officers of the bank and when they reached the bank for inspection, the accused submitted his confessional statement (Ex.-PW-2/A). Likewise, in the enquiry conducted by PW-3, the accused had given confession statement (Ex.-PW-3/A). Mere allegation of threat or inducement is not enough; in the court's opinion, such inducement must be sufficient to cause a reasonable belief in the mind of the accused that by so confessing, he would get an advantage. As pointed out by the trial court and the High Court, though the confession statement has been initially made in the presence of PW-3 and one 'MPS' by the appellant, no question was put to PW-3 that extra-judicial confession (Ex.-PW3/A) was an outcome of any threat, inducement or allurement. The statement which runs to eleven sheets has been held to be made by the appellant voluntarily. Likewise, confession statement (Ex.-PW-2/A) made before PW-2 was in the handwriting of the appellant made in the presence of PW-2 and the then Assistant Chief Officer

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(Inspection). Here again, it was not suggested to PW-2 that Ex.-PW-2/A was outcome of some threat or pressure. The trial court as well as the High Court concurrently held that the confession statements (Ex.-PW-3/A and PW-2/A) were voluntarily made and that the same can form the basis for conviction. There is no good ground warranting interference with the said concurrent findings. [Paras 15, 16] [865-G, H; 866-A-E]

1.3 The conviction of the appellant under Section 13(1)(c) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentence of imprisonment of two years is confirmed. The conviction under Sections 477-A IPC and 409 IPC is confirmed. The occurrence was of the year 1992-94. Considering the passage of time and the facts and circumstance of the case, the sentence of imprisonment imposed on the appellant under Section 409 IPC is reduced to three years. [Paras 17, 18] [866-F-G]

Sahadevan and Another v. State of Tamil Nadu (2012) 6 SCC 403 : [2012] 4 SCR 366 – relied on.

Ajay Singh v. State of Maharashtra (2007) 12 SCC 341 : [2007] 7 SCR 983 ; *Madan Gopal Kakkad v. Naval Dubey and Another* (1992) 3 SCC 204 : [1992] 2 SCR 921 ; *Piara Singh and Others v. State of Punjab* (1977) 4 SCC 452 : [1978] 1 SCR 597 – referred to.

Case Law Reference

[2007] 7 SCR 983	referred to	Para 12
[2012] 4 SCR 366	relied on	Para 13
[1992] 2 SCR 921	referred to	Para 14
[1978] 1 SCR 597	referred to	Para 14

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 576 of 2010.

From the Judgment and Order dated 22.12.2008 of the High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 710 of 2000

WITH

Criminal Appeal Nos.577 and 578 of 2010.

A S. Hari Haran, Vikash Singh, Ejaz Maqbool, Amit Singh Chauhan,
Advs. for the Appellant.

Abhinav Mukerji, AAG, Ms. Bihu Sharma, Ms. Purnima Krishna,
Advs. for the Respondent.

B The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. These appeals arise out of the judgment dated 22.12.2008 passed by the High Court of Himachal Pradesh at Shimla in Criminal Appeal Nos. 710-712 of 2000 in and by which the High Court affirmed the judgment passed by the trial court thereby affirming the conviction of the appellant under Section 13(1)(C) read with Section 13(2) of Prevention of Corruption Act, 1988 and under Sections 409 and 477-A IPC and the sentence of imprisonment imposed upon him.

2. Briefly stated case of the prosecution is that accused was employed as a Peon in the United Commercial Bank in January 1987. He was assigned the job of the Clerk as there was a shortage of clerical staff in the bank and his job was of manning Saving Bank accounts counter. His job was to receive money from the account holders for deposit in Saving Bank accounts. He used to make entries in their pass books in his own hand but would not account money in the account books of the bank nor did he pass it to the cashier. It is alleged that neither the appellant filled the pay-in-slips nor was any deposit made in the scroll, daily case receipt book and the cash payment book maintained by the cashier and he used to pocket that money. When the depositors approached him for withdrawals of money, he would make fake credit entries in the ledger accounts and fill in the withdrawal slips and submit the same to the officer concerned for payment. The Passing Officer misled by the fake credit entry would allow the withdrawals. This way, the appellant caused wrongful loss to the bank to the tune of Rs.38,500/- during the year 1994. When the fraud came to light, a Committee of two officers namely, R.C. Chhabra (PW-3) and M.P. Sethi was deputed to hold a preliminary enquiry and the Committee noticed bungling of accounts by the appellant. After that, Enquiry Committee recommended thorough investigation in the matter. After the preliminary enquiry, FIR was registered against the appellant under Sections 409, 468, 471, 477-A IPC and under Section 13(1)(C) read with Section 13(2) of the Prevention of Corruption Act, 1988 (PC Act, 1988). After investigation, the appellant was charge sheeted for the said offences.

3. To prove the guilt of the accused, prosecution has examined thirteen witnesses and produced documentary evidence. Upon consideration of the oral and documentary evidence, the trial court held that the appellant in his capacity as a public servant, had misappropriated the money entrusted to him, in discharge of his duty, as a public servant. The trial court convicted him for the offences under Section 13(1)(c) read with Section 13(2) of the PC Act, 1988 and Section 477-A IPC for falsification of accounts with intent to defraud the Bank and he was sentenced to undergo rigorous imprisonment for a period of two years along with a fine of Rs.5,000/-. For the offence under Section 409 IPC, the appellant was sentenced to undergo rigorous imprisonment for a period of five years with a fine of Rs.5,000/- and all the sentences were directed to run concurrently. The appellant was, however, acquitted for the offences under Sections 468 and 471 IPC for the charge of forgery by holding that the opinion expert is not precise. Being aggrieved by the conviction, the appellant preferred the appeal before the High Court which was dismissed by the impugned judgment.

4. Learned counsel for the appellant contended that the appellant was working as Peon in the bank and as per bank rules, no clerical job can be assigned to Peon/sub-staff which was admitted by the officers of the bank viz. Prem Chand (PW-1), R.K. Soni (PW-2), R.C. Chhabra (PW-3) and A.K. Gupta (PW-10). It was contended that when any particular job is assigned to an employee different from his duty, then the Manager is supposed to issue office order/duty sheet whereas in the present case, no office order/duty sheet was placed on record to establish that the appellant was assigned the clerical job as alleged. The appellant mainly assails the confessional statement contending that he did not voluntarily make any confession statement and the confessional statement could not have been made the basis for conviction.

5. Learned counsel for the State contended that the appellant acted with dishonest intention to defraud the Bank by making false credit and debit entries in the accounts of various account holders thereby falsifying the account books of the Bank and the courts below rightly convicted the appellant for defrauding the Bank and the impugned judgment warrants no interference.

6. We have carefully considered the rival contentions and perused the impugned judgment and evidence and materials placed on record.

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A 7. In his evidence, A.K. Gupta (PW-10), the then Manager of
UCO Bank, Nerwa Branch had stated that the appellant who was a
Peon in the branch was performing the duties of Cash Clerk for shortage
of staff. He further stated that while the appellant was so working as
Cash Clerk, the appellant used to receive cash from the depositors for
depositing the same in their Saving Bank accounts and used to make the
B entries in the Cash Book then and there and return the pass book to the
customers by pocketing the cash so given to him without making any
credit entry in the ledger. A.K. Gupta (PW-10) further stated that
generally the pay-in-slip is filled in by the depositor himself; but in order
to pocket the money, appellant-Ram Lal filled up the pay-in-slip. PW-10
C further stated that subsequently, when the depositors used to visit the
Bank for withdrawal of the cash from their Saving Bank accounts,
appellant-Ram Lal used to make false credit entries in the ledger books
and after making the debit entries in their accounts, he used to hand over
the cash to the customers.

D 8. The duty of the Peon was, of course, only to clean up the office
and other work in the office like moving files etc. There was, of course,
no office order in writing authorising the appellant to perform the duties
of Clerical Cadre. But in his evidence, A.K. Gupta (PW-10) has stated
that though there was no office order authorising the appellant to perform
the work of Clerical Cadre, he informed the Head Office regarding the
E appellant for performing the duties of Cash Clerk for want of shortage
of the staff. In this regard, in his evidence, R.C. Chhabra (PW-3), the
then Deputy Chief Officer of UCO Bank has stated that the Peon like
appellant was not authorised to do the work of Clerical Cadre. PW-3
has also stated that A.K. Gupta (PW-10) and other officials of Nerwa
F Branch namely S.S. Rana, B.S. Guleria were negligent in their duties by
so assigning the clerical work to the appellant. PW-3 was however
quick enough to add that it cannot be said that those officers (A.K.
Gupta (PW-10), S.S. Rana (PW-11) and B.S. Guleria) were responsible
for the act of committing fraud. There is no merit in the contention of the
G appellant that in the absence of office order authorising him to perform
the clerical work, he cannot be held responsible.

9. R.C. Chhabra (PW-3) was the then Deputy Chief Officer of
UCO Bank, Divisional Office, Shimla who inspected UCO Bank, Nerwa
Branch during the relevant time. R.K. Soni (PW-2) was the Grade-I

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Officer at Zonal Office, Shimla who also inspected UCO Bank, Nerwa Branch in the year 1994. R.C. Chhabra (PW-3) stated that the appellant wrote confession statement in his own hand, in the presence of M.P. Sethi and signed the same which formed part of his report Ex.-PW-3/A. Eleven sheets are the tabulated statements in respect of the Saving Bank accounts, in which fake credit entries had been detected. At the foot of these statements, the appellant wrote in his own hand and under his signature, that he had received the money from the account holders, named in the statements, for being deposited in their accounts, but instead of accounting for the same in the respective account books of the bank, the appellant misappropriated it and later on made fake credit entries and forged the initials of the Manager.

10. After the preliminary enquiry was conducted, the Divisional Office nominated two senior officers namely, R.K. Soni (PW-2) and H.O. Aggarwal, who submitted the report consisting of 202 pages, which has been made part of the investigation report, Ex.-PW-2/A. R.K. Soni (PW-2) deposed in his evidence that the writings at pages (143) and (144) of report Ex.-PW-2/A, was prepared by the appellant-accused voluntarily in his own handwriting, in his presence and in the presence of his co-investigator H.O. Aggarwal and the appellant-accused admitted having received money from various account holders, for being deposited in their Saving Bank accounts and having made entries in their pass books. In his confession statement, the appellant also admitted that he did not account for the money, but misappropriated the same and that when the account holder visited the bank for the withdrawal of the money, he used to make fake credit entries in the ledger folio of their accounts and on the basis of those fake entries, withdrawals used to be made.

11. Contention of the appellant is that the confession statement of the appellant was not voluntary and PWs 2 and 3 were persons in authority who have pressurised the appellant to make the confession and therefore, Ex.-PW-3/A and Ex.-PW-2/A cannot be said to have been made voluntarily and cannot form the basis for conviction.

12. Placing reliance upon *Ajay Singh v. State of Maharashtra* (2007) 12 SCC 341, it was contended that extra-judicial confession can only form basis of conviction if it is voluntary and person to whom confession is made should be unbiased and not inimical to the accused. Learned counsel also placed reliance upon *Madan Gopal Kakkad v.*

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- A *Naval Dubey and another* (1992) 3 SCC 204 to contend that extra-judicial confession of accused should not have been obtained by coercion, promise of favour and should be voluntary in nature acknowledging the guilt. Learned counsel submitted that the officers who obtained extra-judicial confession of the appellant (Exts.-PW-3/A and PW-2/A) had other vested interest to act upon and the appellant being a Peon must have been allured by the false hope of being absolved from the charges.

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13. Extra-judicial confession is a weak piece of evidence and the court must ensure that the same inspires confidence and is corroborated by other prosecution evidence. In order to accept extra-judicial confession, it must be voluntary and must inspire confidence. If the court is satisfied that the extra-judicial confession is voluntary, it can be acted upon to base the conviction. Considering the admissibility and evidentiary value of extra-judicial confession, after referring to various judgments, in *Sahadevan and Another v. State of Tamil Nadu* (2012) 6 SCC 403, this court held as under:-

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- “15.1. In *Balwinder Singh v. State of Punjab* 1995 Supp (4) SCC 259 this Court stated the principle that:

“10. 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 extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.”

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- 15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in *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 the 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....”

15.6. Accepting the admissibility of the extra-judicial confession, the Court in *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* (1970) 2 SCC 105, *Mulk Raj v. State of U.P.* AIR 1959 SC 902, *Sivakumar v. State By Inspector of Police* (2006) 1 SCC 714 (SCC paras 40 and 41 : AIR paras 41 and 42), *Shiva Karam Payaswami Tewari v. State of Maharashtra* (2009) 11 SCC 262 and *Mohd. Azad alias Shamin v. State of W.B.* (2008) 15 SCC 449]”

14. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra-judicial confession of accused need not in all cases be corroborated. In *Madan Gopal Kakkad v. Naval Dubey and Another* (1992) 3 SCC 204, this court after referring to *Piara Singh and Others v. State of Punjab* (1977) 4 SCC 452 held that the law does not require that the evidence of an extra-judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated.

15. As discussed above, if the court is satisfied that if the confession is voluntary, the conviction can be based upon the same. Rule of Prudence does not require that each and every circumstance mentioned in the confession with regard to the participation of the accused must be separately and independently corroborated. In the case at hand, as pointed out by the trial court as well as by the High Court, R.K. Soni (PW-2) and R.C. Chhabra (PW-3) were the senior officers of the bank and when they reached the bank for inspection on 23.04.1994, the accused submitted his confessional statement (Ex.-PW-2/A). Likewise, in the enquiry

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A conducted by R.C. Chhabra (PW-3), the accused had given confession statement (Ex.-PW-3/A).

16. Contention of the appellant is that PWs 2 and 3 being the higher officials, it cannot be said that the confession statement of the accused has been made voluntarily and it must have been under the inducement or under false promise of favour. Mere allegation of threat or inducement is not enough; in the court's opinion, such inducement must be sufficient to cause a reasonable belief in the mind of the accused that by so confessing, he would get an advantage. As pointed out by the trial court and the High Court, though the confession statement has been initially made in the presence of R.C. Chhabra (PW-3) and M.P. Sethi by the appellant, no question was put to R.C. Chhabra (PW-3) that extra-judicial confession (Ex.-PW3/A) was an outcome of any threat, inducement or allurement. The statement which runs to eleven sheets has been held to be made by the appellant voluntarily. Likewise, confession statement (Ex.-PW-2/A) made before R.K. Soni (PW-2) was in the handwriting of the appellant made in the presence of R.K. Soni (PW-2) and H.O. Agrawal, the then Assistant Chief Officer (Inspection). Here again, it was not suggested to R.K. Soni (PW-2) that Ex.-PW-2/A was outcome of some threat or pressure. The trial court as well as the High Court concurrently held that the confession statements (Ex.-PW-3/A and PW-2/A) were voluntarily made and that the same can form the basis for conviction. We do not find any good ground warranting interference with the said concurrent findings.

17. In so far as the conviction under Section 13(1)(c) read with Section 13(2) of PC Act, 1988, the appellant was sentenced to undergo rigorous imprisonment for two years. For conviction under Section 477-A IPC, the appellant was sentenced to undergo rigorous imprisonment for two years. For conviction under Section 409 IPC, the appellant was sentenced to undergo rigorous imprisonment for five years. The occurrence was of the year 1992-94. Considering the passage of time and the facts and circumstance of the case, the sentence of imprisonment imposed on the appellant is reduced to three years.

18. In the result, the conviction of the appellant under Section 13(1)(c) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentence of imprisonment of two years is confirmed. The conviction under Sections 477-A IPC and 409 IPC is confirmed and the

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sentence of imprisonment under Section 409 IPC is reduced to three A
years. These appeals are accordingly partly allowed. The appellant
shall surrender himself within four weeks from today to serve the
remaining sentence, failing which the appellant shall be taken into custody.

Divya Pandey

Appeals partly allowed.