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HIGH COURT OF JUDICATURE AT ALLAHABAD
MANOJ KUMAR GUPTA; OM PRAKASH TRIPATHI, JJ.

CRIMINAL APPEAL No. 5712 of 2008; 04.04.2022

Sunita and Others v. State of U.P.

Counsel for Appellant :- Pankaj Kumar Tyagi, Abhishek Kumar Srivastava, Ajay Singh, Amar Nath Mishra, Indra Bhan Yadav, R.S.Kushwaha, S.R.Kushwaha, Smt. Archana Tyagi, Sushma Devi, V.K.Rai, V.K.Shukla, V.S.Shukla

Counsel for Respondent :- Govt. Advocate

Om Prakash Tripathi, J.

Heard Ms. Sushma Devi, learned amicus curiae, counsel for appellant nos. 1 & 2, Sri Abhishek Kumar Srivastava, learned counsel for appellant no. 3, Sri A.N. Mulla, learned AGA for the State and perused the record.

This criminal appeal has been preferred against the judgment and order dated 21.08.2008 passed by the Special/Additional Sessions Judge, Court No.4, Saharanpur in Sessions Trial No. 294 of 2004, arising out of Case Crime No. 206 of 2004 (State Vs. Sunita & others), Police Station Kotwali Nagar, District Saharanpur convicting and sentencing the appellants to undergo life imprisonment under Section 302/34 of India Penal Code (for short 'IPC') with a fine of Rs.10,000/- each, in default thereof, to undergo three months additional imprisonment.

The prosecution case in brief is that complainant, Om Prakash lodged the first information report on 18.04.2004 at Police Station Kotwali Nagar, District Saharanpur with the allegation that on 18.04.2004, at 07:15 am, wife of Charan Jeet @ Babbu told the informant that last night, at 11:30 pm, four persons who came from Delhi, were very well known to her husband, administered him intoxicating material, on account of which, he became unconscious. On the next morning, she found her husband dead. She also said that two days ago, two men had come to inquire about her husband. On the basis of written report, Ex.Ka.1, police registered FIR being Case Crime No. 206 of 2004, under Section 302 IPC against four unknown persons. During investigation, Investigating Officer prepared site plan and recorded the statements of the witnesses. After completion of investigation, Investigating Officer submitted a charge sheet, Ex.Ka.17, in the Court of Chief Judicial Magistrate, Saharanpur under Section 302 IPC. Cognizance of offence was taken by the Magistrate concerned. Thereafter, case was committed to the Court of Sessions for trial.

The case was transferred to the Court of Special/Additional Sessions Judge, Court No.4, Saharanpur and charge was framed against the appellants under Section 302/34 IPC on 09.08.2004. Accused appellants pleaded not guilty and claimed to be tried.

In order to prove the charge framed against the appellants, prosecution has examined (PW-1) Om Prakash, (PW-2) Raj Rani, (PW- 3) Sudhir Pal, (PW-4) Raj Singh,

(PW-5) Dr. R.K. Agrawal, (PW-6) Sandeep, (PW-7) Bina Devi, (PW-8) Mukesh Rawal, (P.W.-9) Iqbalujama Khan. Prosecution has proved written report Ex.ka.1, Panchayatnama Ex.ka.2, letter loss Ex.ka.3, Photo loss Ex.ka.4, letter CMO Ex.ka.5, letter R.I. Ex.ka.6, recovery memo table leg Ex.ka.7, recovery memo wrapper of medicine Ex.ka.8, recovery memo by which legs and hands of the deceased were tied Ex.ka.9, blood stained and simple earth Ex.ka.10, recovery memo of clothes of deceased Ex.ka.11, recovery memo of blood wiped clothes Ex.ka.12, Chick FIR Ex.ka.13, GD Ex.ka.14, post-mortem report Ex.ka.15, spot map Ex.ka.16, charge sheet Ex.ka.17, report FSL Ex.ka.18 as documentary evidence.

P.W.1 complainant Om Prakash stated that deceased was his cousin. On 18.04.2004, at about 07:00am, Sunita came to his house and stated that on 17.04.2004, at about 11:30 pm, four persons came from Delhi and administered her husband intoxicating material. Sunita went to another room. They all assaulted Charanjeet on his head by leg of table due to which he has sustained injuries on his head as a result of which he died. Charanjeet has two children, who are mentally disabled.

Charanjeet was doing job of Conductor in Delhi. He had been living in Delhi since six years. On the day of the incident, he came along with his wife and children from Delhi. Sunita is lady of bad character. Six years ago, at the house of Sunita at Sharanpur, Charanjeet caught Sunita red handed with one person. Parents of Sunita came, made apology, after accepting the said apology, Charanjeet pardoned his wife. At the house of Charanjeet, Ashok Kumar, his wife Bina and their children lived as tenant. Sunita told the name of Amit Chopra, Raju and Dinesh, who were neighbours at her paternal home in Delhi. Sunita told that all the four children, who born from the wedlock of her and Charanjeet, were handicapped. Two are alive and two died. Sunita told that she had made illicit relations with three accused, so that, the coming generation would be hale and hearty.

P.W.2 Rajrani has stated that the deceased was his nephew. Her sister's name was Prakash Rani, who died. Charanjeet @ Babbu was only son of her sister Prakash Rani. Earlier, Charanjeet lived in Numaish Camp at Saharanpur, after that, he lived at his in-laws' house in Delhi along with his wife and children and doing job of conductor. Her sister Prakash Rani was living with P.W.2 Rajrani and at the time of incident also, her sister was with her in Ludhiana.

Charajeet @ Babbu died about two years and nine months ago. When she knew about the murder of Charanjeet, then she came along with her sister Prakash Rani at Saharanpur from Ludhiana. On third day of the incident, P.W.2 and her sister sat at her room. All relatives have gone. Her sister Prakash Rani was very sad and was lamenting due to murder of his son. Sunita fell on the legs of Prakash Rani, apologizing that "she had developed illicit relationship with Amit Chopra (friend of his brother). Charanjeet began to suspect on her and used to be angry with her and forbades her to meet Amit Chopra. Due to this, Sunita became annoyed, she and Amit Chopra made a plan in Delhi

to remove Charanjeet from their way. Amit, Raju, Dinesh came from Delhi, on 17.04.2004, at about 09-10 pm and came at the house of Charanjeet. She administered intoxicating pills in the sikanji of Charanjeet and he became unconscious. Thereafter Amit, Raju, Dinesh and she killed Charanjeet jointly.” This statement was given by Sunita before PW2 and her sister and also stated that if she is not pardoned then she will commit suicide with children.

P.W. 2 has stated in her cross-examination that she has problem of hearing and vision. Her sister Prakash Rani died one and a half year ago. She had been living with her since three years. Om Prakash is son of her sister-in-law (nand). She has stated that Charanjeet died on 17th April but she does not remember the year of his death. She has stated that she has no knowledge of her hearing and vision problem. Charanjeet had been living in Delhi since 3-3½ years before the incident. He comes to Saharanpur occasionally. She got the information of murder of Charanjeet from Om Prakash by telephone. Om Prakash told her that three persons came from Delhi and murdered Charanjeet. Sunita apologized on 20th April, 2004, at that time, P.W.2 and her sister were present there. Her sister was weeping. On the day of the incident, she came from Ludhiana.

She stated that she came from Ludhiana to Saharanpur at about 02:00- 02:30 pm on 18.04.2004. After the incident, she went back to Ludhiana. Her sister Prakash Rani sold his house. She heard that at the house of Charanjeet, some persons came at about 09-10 pm. Sunita had apologized to her mother-in-law.

P.W.3 S.I. Sudhir Pal has stated that on 18.04.2004, at about 10:00 am, he has prepared inquest report, letter CMO, letter R.I., photograph of dead body, recovery memo of one wooden table, wrapper of medicines. Recovery memo of clothes by which legs and hands of the deceased was tied with white patti on his head, one pink dupatta by which his legs were tied. Recovery of blood stained earth & plain earth, blood stained clothes, green trouser of the deceased, brown undergarment etc. were sealed.

P.W.4 Constable Raj Singh deposed that on 18.04.2004, he has written chick FIR, Ex.Ka.13 and GD, Ex.Ka.14. Witness has proved FIR and G.D.

The postmortem examination, Ex.ka.15, was conducted on the dead body of the deceased, Charan Jeet @ Babbu by Dr. R.K. Agarwal on 18.04.2004 at 03:00 pm. The cause of death was shock and haemorrhage as a result of ante-mortem injuries at about half day before the time of postmortem. Post-mortem report was proved as Ex.ka.15 by P.W.5.

P.W.6 Sandeep deposed that he lives in the same locality where Charanjeet @ Babbu died. Charanjit had gone to Delhi. On 17/18.04.2004 at around 11:00 pm, he had forbidden three persons from ringing the bell of his house, in front of Police Inspector, he did not even recognize the three persons. He also denied having witnessed the culprits. He is hostile witness.

P.W.7 Bina Devi deposed that when the murder took place, she was the tenant in that house and Sunita told about the murder; the people who came on the night of the incident did not saw them. On questioning by the police, she has told that three people had come, whom the landlord had disclosed as her relatives, who had come from Delhi. At 07:00 am, Sunita told her that four men had killed her husband and all made him unconscious. She also denied having witnessed the culprits. She is hostile witness.

P.W.8 Mukesh Rawal deposed that Sunita is his sister, she was married to Charanjit Singh, who worked as a conductor in a private bus in Delhi. Amit Chopra lived in a rented house near the house of the deceased and this witness. Sunita has an illicit relationship with Amit Chopra. This witness has forbade Amit Chopra to meet Sunita. When he told the deceased Charanjit about Sunita's illicit relationship, he came to Saharanpur with Sunita and his children.

PW9 Investigating Officer Iqbalujama Khan along with SI Sudhir Pal and other police personnel has visited the spot on 18.04.2004. Wooden table, nitrogen, medicine cover and clothes to which the head, legs and hands of deceased Charanjit were tied, blood stained clothes and other clothes were recovered and prepared recovery memo. During investigation, he came to know that Sunita is a woman of bad character. He tried to take statement of the wife of the deceased, but he was unsuccessful. On 19.04.2004, statement of Witnesses, namely, Sandeep Soni, Smt. Bina, Lal Bahadur, SI Sudir Pal were recorded. On the same day, statements of the deceased's mother and aunt (mausi) were also recorded. With the help of Sunita and Sandeep, accused Amit, Raju and Dinesh were arrested from Saharanpur bus stand and their statements were also recorded. Charge sheet, Ex.ka.17, Report of the Vidhi Vigyan Prayogshala, Ex.ka.18, broken wooden table, Ex.ka.1, Dupatta, Clothes etc., Ex.ka2, Ex.ka.13 were proved by the witness.

Statement of accused under Section 313 Cr.P.C was recorded, accused Sunita has denied her illicit relations with anyone and also stated that her husband Charanjeet @ Babbu had come to Saharanpur for taking rented money. She denied the incident dated 17.04.2004 and also denied having given any intoxicating tablet to her husband. She has stated that she had not told Om Prakash about the incident. Lastly, she stated that the prosecution witnesses are deposing falsely only because of property dispute. Statement of the accused Raju under Section 313 Cr.P.C. was recorded, he denied the incident dated 17/18.04.2004 and he also denied the illicit relations of Sunita with anyone. Statement of the accused, Amit Chopra under Section 313 Cr.P.C. was recorded. He has denied having knowledge about Sunita and her family and he also denied the illicit relations with her and denied the incident dated 17.04.2004. He has stated that Investigation Officer has arrested him from his house and he also stated that the prosecution witnesses are totally false.

Accused had examined DW-1 (Aruna) in his defence. She stated that her sister Sunita had no illicit relation with accused and some unknown persons came on 17/18.04.2004 and murdered Charanjeet @ Babbu.

Learned counsel for the appellants has submitted that they have been falsely implicated in this case and has also contended that the case is based on circumstantial evidence. There is no eye witness of the incident. There is no evidence of illicit relationship of Sunita, Amit Chopra and Raju. There is no motive established by the prosecution for causing this serious offence. Evidence given by the witnesses are not reliable and accused are innocent and liable to be acquitted.

These arguments were opposed by learned AGA and submitted that accused Sunita had given natural and unambiguous extra-judicial confession before near relatives, which is trustworthy. Chain of circumstantial evidence is complete and case against the present appellants is proved beyond reasonable doubt.

So far as the FIR of the case is concerned, incident took place in the fateful night on 17/18.04.2004. FIR was lodged by Om Prakash, who is cousin of the deceased. On 18.04.2004, at about 08:45 am, under Section 302 IPC Crime No. 119 of 2004, P.S. Kotwali Nagar, District Saharanpur. The incident took place in the intervening night of 17/18.04.2004 from 11:30 pm till morning. The place of incident is 2km far from the police station. It is alleged in the FIR that at about 07:15 am, wife of the deceased Sunita told him that at about 11:30 pm, four persons came from Delhi; all were very well known to her husband; they administered her intoxicating material. Sunita found her husband Charanjeet @ Babbu dead in the morning. Murder had been committed by those persons. This written report was prepared by the complainant Om Prakash and given to the police station within two hours. He had not mentioned the name of the assailants. He had reported only on the basis of what was told by Sunita (wife of deceased). Written report was proved by PW1 as Ex.Ka.1 and Chick FIR has been proved by PW4 (Constable Raj Singh), Ex.ka.13 and Kayami GD Rapat No.17, Ex.ka.14, there is nothing in the crossexamination of PW4, which shows that FIR is ante-time. It is apparent that FIR has been lodged promptly without any consultation.

The main question for determination is that what was the motive for the incident by the accused, why they killed the deceased Charanjeet @ Babboo. P.W.1 has stated that Sunita and Charanjeet had two children, both are mentally retarded and physically handicapped. Charanjeet was doing the job of conductor for the last six years in Delhi. Charanjeet and Sunita along with their children came in the evening on the date of the incident. Sunita is a woman of loose character. About 6-6 ½ years ago, deceased caught Sunita in his home with a male in an objectionable condition. The members of parental side of Sunita and her father came and tendered apology. Charanjeet accepted the apology and pardoned his wife. Ashok Kumar along with his wife Bina and their children lived as tenant in the house of the deceased. Sandeep is neighbour. Sunita told the name of Amit Chopra, Raju and Dinesh, who were neighbours at her paternal home in Delhi.

Sunita told that all the four children, who born from her wedlock with Charanjeet, were handicapped. Two are alive and two had died. Sunita told that she had developed illicit relations with three accused, so that, the coming generation would be hale and hearty. There is nothing contrary in the cross-examination of the witness PW1.

P.W.2 (Raj Rani) is the maternal aunt, aged about 75 years, she also deposed that deceased was the only son of her sister Prakash Rani. Prakash Rani used to live with her in Ludhiana. She was in Ludhiana with her at the time of incident. Sunita made extra-judicial confession before her that "she had illicit relationship with Amit Chopra. Charanjeet began to suspect her and used to be angry and forbade her to meet Amit Chopra. Because of this, she made a plan in Delhi with Amit Chopra to end Charanjeet. She mixed intoxicating pills in juice (sikanji) and served to Charanjeet. Thereafter, with the help of Amit, Raju and Dinesh, all the four have committed the murder of Charanjeet." Nothing adverse came in the cross-examination of the witness.

PW.8 Mukesh Rawal, adopted brother of the accused Sunita, had stated that there was illicit relationship between Amit Chopra and Sunita, then, he forbade Amit Chopra from meeting Sunita. Charanjeet also came to know this fact, so he went to Saharanpur along with her wife Sunita and children. Sunita was detained in jail with her children. About four years ago, Sunita met him in court and repented that she had committed a mistake and she with the help of Amit Chopra, Raju and Dinesh killed Charanjeet, kindly help her. He has not seen Raju and Dinesh ever. Amit Chopra had also told the name of co-accused Raju and Dinesh.

Although this fact was denied by the accused in statement under Section 313 Cr.P.C. but on the basis of corroborated and credible evidence, it is proved that accused Sunita and Amit Chopra had illicit relationship. It is also proved that Sunita gave birth to four disabled children from the wedlock of Charanjeet. Two died and two are alive. They are in jail with Sunita.

Prior to the incident, deceased came to know that Sunita had illicit relationship with Amit Chopra and Raju due to this, they came from Delhi to Saharanpur, where, the deceased was brutally murdered. The motive for causing murder was begetting of healthy offspring. That's why, the accused Sunita, Amit Chopra and Raju planned to get rid of from deceased Charanjeet. Thus, the prosecution had succeeded to establish the motive for the present crime against Sunita, Amit Chopra and Raju.

P.W.-5 Dr. R.K. Agrawal had performed the post-mortem report of the deceased on 18.04.2004, at about 03:00 pm. The report is as under :

Accused was about 33 years old, healthy body, eyes and mouth were closed. Rigormortis was present in both the hands and legs after the death. Following injuries were found on the body of the deceased :

- (i) torn wound on right side of head of size 5cm x 1cm x muscle deep.
- (ii) torn wound at the centre of the forehead of size 7cm x 1cm located deep bone injury.

- iii) torn wound on left of head 6cm x 1cm x muscle deep.
- iv) torn wound on left of head 4cm x 1cm x muscle deep.
- v) torn wound on left-back side of head of size 10cm x 1.5cm x bone deep x broken bone under the injury.
- vi) torn wound on top of the head size of 7cm x 1cm x muscle deep.
- vii) torn wound on left of head of size 8cm x 1cm x muscle deep.
- viii) torn wound on top of the head of size of 6cm x 1.5cm x bone deep and broken bone of injury.
- ix) torn wound on right side of head of size 6cm x 1cm x muscle deep.
- x) torn wound on right side of head of size 2cm x ½ cm muscle deep.
- xi) torn wound on right side of head of size 4cm x 1cm x muscle deep.

The cause of death is due to ante-mortem injuries, excessive bleeding and shock half day earlier caused by blunt object as piece of wood.

Deceased had 11 injuries on the head. The bones of the head had been injured from many points and there was no other injury except head. Injuries only on the head, vital part of the body shows only intention to kill Charanjeet.

The main question before us is that whether accused Sunita, Amit Chopra and Raju had killed Charanjeet on 17/18.04.2004 in the night. This case is based on extra-judicial confession made by the accused Sunita and circumstantial evidence. She had made extra-judicial confession before PW2 (maternal aunt), aged about 75 years and PW-1 Om Prakash, who is cousin of the deceased and in presence of her mother-in-law Prakash Rani, who died later on. PW-8 Mukesh Rawal adopted son of his father. On the point of extra-judicial confession, following rulings are mentioned as under:

State of Uttar Pradesh Vs. M.K. Anthony (1985) 1 SCC 505, it has been held that :

“an extra-judicial confession was made by the accused to his friend. The court found that the statement was made by the accused was unambiguous and unmistakably conveyed that the accused was perpetrator of the crime. Testimony of friend was true, reliable and trustworthy. Confession of accused on such extra-judicial confession was proper and no corroboration was necessary which importance should not be given to minor discrepancies and technical error. Generally, extra-judicial confession is made before an unbiased person, not the enemy of the accused and that person has not such motive to speak false statement. It should be voluntarily unambiguous and clear. No fact has been concealed with regard to the incident.”

Satish and others vs. State of Haryana (2018) 2 SCC Cr. 652, it has been held that :

“Extra-judicial confession is a weak piece of evidence, normally by itself, it can be corroborative only. It should be proved like other evidence. It is not necessary that witness should speak the same about as told by the accused.”

State of Himachal Pradesh vs. Raj Kumar (2018) SCC Cr. 452, it has been held that :

“circumstantial evidence of prosecution establishing circumstances by cogent and convincing evidence. Circumstances cumulatively taken, form accompanied, general pointing out that murder was committed by accused and none else, burden under Section 106 Evidence Act not discharged by the accused. Accused should explain incriminating circumstances against him.”

Ishwari Lal vs. State of Chattisgarh 2020 (1) SCC Cr. 13, it has been held that :

“extra-judicial confession is a weak piece of evidence but at the same time, if the same is corroborated by other evidence on record such confession can be taken into consideration to prove the guilt of the accused.”

Sahoo vs. State of U.P., 1966 AIR 40, 1965 SCR (3) 86, it has been held that :

“an extra-judicial confession may be an expression of conflict of emotion, a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime.” Before evidence in this behalf is accepted, it must be established by cogent evidence what were the exact words used by the accused. The Court proceeded to state that even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence. The High Court did not interfere with the conviction observing that the evidence of extrajudicial confession is corroborated by circumstantial evidence.

Pyara Singh Vs. State of Punjab (1978) 1 SCR 661,

Apex Court observed that the law does not require that evidence of an extra-judicial confession should in all cases be corroborated. It thus appears that extra-judicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extra-judicial confession comes from the mouth of witness/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 for attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable,

trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon.

Palvinder Kaur Vs. State of Punjab AIR 1952 SC 354,

“if extra-judicial confession was not acceptable in part, it has to be rejected completely. It could be held to be discredited for some purpose, and yet accepted as evidence for other purpose.”

In the present case, extra-judicial confession was made by accused Sunita, first time on the day following the incident i.e. 18.04.2004 at 07:00 am, before PW-1 complainant (cousin of the deceased) who was residing nearby. Extra-judicial confession is as under :

“first of all intoxicating pills were administered to Charanjeet, then she went in another room, Sunita told that they inflicted head injury to Charanjeet by leg of the table and he died due to the injury received.”

In the cross-examination, no question has been asked about the said extra-judicial confession, but it was suggested that it is wrong to say that Sunita accused had not stated such fact. FIR was lodged against four unknown persons but it will not affect the prosecution case.

PW.-2 Raj Rani was 75 years old and in relation she is aunt (mausi). Sunita made extra-judicial confession before her after third day from the incident as under:

“Her sister Prakash Rani was very sad and was weeping due to death of his son. Sunita fell on the legs of Prakash Rani and apologizing that she had developed illicit relationship with Amit Chopra (friend of his brother). Charanjeet began to suspect on her and angry with her and forbades her to meet with Amit Chopra. Due to this, she became annoyed, she and Amit Chopra made a plan in Delhi to remove Charanjeet from their way. Amit, Raju, Dinesh came from Delhi, on 17.04.2004, at about 09-10 pm and came at the house of Charanjeet. She administered intoxicating pills in the sikanji of Charanjeet, thereafter Amit, Raju, Dinesh and she killed Charanjeet jointly.”

This statement was given by Sunita before PW2 and her sister and also stated that if she had not pardoned her then she will suicide with children.

Mother of the deceased Prakash Rani died later on. P.W. 2 Raj Rani is about 75 years old. She is impartial and has no enmity with the accused, she has no motive to give a false statement. P.W. 1 has also no motive to give false statement. The said statement of the accused is clear and unambiguous and unmistakably conveyed that accused Sunita and other appellants are the only perpetrator of the crime. Testimony of aunt PW2 and cousin PW1 is true, reliable and trustworthy. Both the witnesses PW1 and PW2 corroborated the extra-judicial confession made by Sunita. The extra-judicial confession was made by Sunita before PW1 on the first day of the incident and third day of the incident before PW2.

Such extra-judicial confession was also made before the Investigating Officer by Sunita which was also heard by Raj Rani and Prakash Rani. This will not affect the prosecution case as extra-judicial confession made by Sunita was given before PW2 and later on before police which was also heard by the PW2. Such extra-judicial confession is also made by the accused Sunita before PW8 Mukesh Rawal, who is adopted son of Indrasen. He is brother of the accused Sunita. This witness was neither charge-sheeted nor permitted by court to be examined and he has stated that when he went to meet Sunita in jail/Court three and a half years ago and she had made above confession is not relevant because it is not clear that when the extrajudicial confession has been made before PW8 and why he has not disclosed this fact to the Investigating Officer.

Thus, it is evident that above extra-judicial confession made by the accused Sunita before near relations was without undue influence, coercion or pressure. It was voluntary, no suggestion was made in the cross-examination that such extra-judicial confession are tempted or non-voluntary. Thus, the said extra-judicial confession is reliable and admissible evidence being trustworthy and accepted as a whole. There is no enmity of Sunita against Raju & Amit Chopra.

Spot map of the case has been proved, Ex.Ka.16, which is not challenged by the defence. This shows that on the point A dead body of Charanjeet was lying near double bed and sofa and this shows that it was the living room of Sunita. It is also admitted fact that one tenant Sandeep (PW-6) was also residing in the same house. This shows that the deceased, Sunita, Amit Chopra and Raju were present in the same room where the dead body of the deceased was lying and no other living room is shown in the spot map or suggested by the defence that Sunita was sleeping in another adjoining room. After the incident, Sunita had not made any hue and cry or scream for protection of her husband. She was silent throughout the night. PW-6, neighbour of the same premises has also stated that Sunita had not told about the murder of Charanjeet in the intervening night of 17/18.04.2004. She had also not told about the incident to the tenant Bina Devi PW.7. Accused Sunita told about the incident to P.W.1 Om Prakash at 07:15 am and in the meantime, she was silent about the incident.

It is true that every person has distinct reactions during/after incident. Some make interference in the incident, some become silent spectator and some flee from the spot to save her life. On the point of reaction, following rulings are necessary to be mentioned here:

Marvadi Kishore Paramanand Vs. State of Gujarat (1994) 4 SCC 549,

“Different persons react differently in different situations and circumstances. No hard and fast rule of universal application with regard to the reaction of a person in a given circumstance can be laid down. Most often when a person happens to see or come across a gruesome and cruel act being perpetrated within his sight then there is a possibility that he may lose his equilibrium and balance of mind and therefore he may remain as a silent spectator till he is able to reconcile himself and then react in his own

way. There may be a person who may react by shouting for help while others may even choose to quietly slip away from the place of occurrence giving an impression as if they have seen nothing with a view to avoid their involvement, in any way, with the occurrence. Yet, there may be persons who may be so daring, hazardous and chivalrous enough to come forward unhesitatingly and jump in the fray at the peril of their own life with a zeal to scare away the assailants and save the victim from further assailants.”

Leela Ram Vs. State of Haryana (1999) 9 SCC 525,

“Reaction of eye witness, different witnesses react differently. There cannot be any set pattern of or a rule of human reaction on the basis of non-confirmity where with a piece of evidence may be discarded.”

From the cogent & trustworthy evidence, it is proved that accused Sunita, wife of the deceased, who was present in the room, at the time of incident, did not interfere or made struggle with the other accused to save the life of her husband. She had not made any noise or even hue and cry/scream; she was not only silent spectator of the incident but also offered assistance in commission of the crime. Thus, the inaction shown by the accused Sunita indicates that she has mala fides and knew everything about murder of her husband.

Ex.ka.8, is recovery memo of wrapper of medicine nitrogen 10mg from the place of occurrence. It was administered in juice (sikanji) to the deceased by Sunita, due to which, he became unconscious. This was necessary for the accused, because in conscious position, they were not in a position to kill the deceased silently. How the empty wrapper of the said medicine was found from the place of occurrence is not explained by the accused in the statement under Section 313 Cr.P.C. No suggestion was made in cross-examination that this wrapper was planted. Due to this, deceased was not in position to defend himself, unable to make any hue & cry. It is the case of prosecution that injury on the head of the deceased was inflicted through leg of the table. Recovery memo of wooden table was proved as Ex.ka.7. The wooden leg of the table was recovered from the spot. From the evidence, it is apparent that the wooden leg of the table has not been sent for chemical examination to FSL and on the leg of the table, presence of blood is not proved. This will not damage the prosecution case. Sunita herself stated that Charanjeet was inflicted injury on his head with the leg of the table. There was no injury on the body of the accused Sunita, this shows that she had not made any intervention to save the life of her husband, who was murdered by the accused.

From the evidence, it is proved that at the time of incident, accused Sunita was in the room with her husband, so Sunita is the best witness for the murder of her husband. Section 106 of the Evidence Act lays down that *“when any fact is established within the knowledge of any person, the burden of proving that fact is upon him.”* Thus, how the husband of Sunita had been murdered is especially within her knowledge that who has killed him and she has not made any noise to save the life of her husband. Accused Sunita failed to discharge the burden of proving these facts. This fact also goes against

Sunita and indicates that she knows the actual assailant, which has been disclosed by her in her extra-judicial confession.

From the perusal of inquest report, Ex.ka.2, it reveals that dead body of the deceased Charanjeet was lying near the bed. Both legs were tied up with chunni, both hands were tied up with rosy chunni from the back side. There was bandage of white clothes on the head of the deceased. There were clothes full of blood near the dead body. There were sandal in both the legs. Zip of pant was found open. There were injuries on the forehead and back side of the head. From the postmortem report, there was no other injury except head of the deceased. This shows that injuries has been inflicted on the vital part of the deceased in helpless condition, when hands and legs of the deceased were tied up by the Chunni. This Chunni relates to Sunita and this fact was not denied by her. The bandage of white clothes on the head of the deceased shows that stranger will not put such sort of bandage on the head of the deceased. Clothes full of blood found near the dead body also shows that there was profused oozing of blood from the injuries of the deceased. Such act cannot be expected from a stranger/outside killer. The stranger killer will never keep the clothes tied on the head of the deceased and will never wipe the blood spilled on the floor. The said topography only indicates that accused had clear-cut intention to kill the deceased and none else. From the perusal of FSL report, Ex.ka.18, viscera report, no chemical poison was found in the stomach of the deceased. Sandal was found on the feet of the deceased. This shows that the incident took place before bedtime. No person will wear sandal on his feet while sleeping. This also shows that the murder was committed before sleeping.

Defence taken by the accused Sunita in her statement under Section 313 Cr.P.C. is that informant Om Prakash lodged this report that she may not demand her share in the house. She also stated that due to dispute of property, informant has given false evidence. But the accused Sunita had not submitted any documentary evidence with regard to dispute between Om Prakash and Sunita. Deceased is the son of maternal uncle of Om Prakash. From the evidence of PW2, it reveals that Prakash Rani mother of the deceased has sold the house of her husband that is father of the deceased. It also reveals that Om Prakash had helped Prakash Rani in selling that house. It is admitted fact that Charanjeet and Sunita came to Saharanpur to collect the rent of his house from Delhi. This shows that the defence taken by the accused Sunita is not believable or probable. Informant/PW1 has no enmity to implicate accused falsely. The next defence taken by Sunita is that PW8 Mukesh Rawal wants to usurp the property of her father in Delhi. From the evidence, it is apparent that Mukesh Rawal is adopted son of Indrasen. Indrasen has no son, so he had adopted Mukesh Rawal, the son of his sister. After death of Indrasen, property of Indrasen was inherited by Mukesh Rawal and in that house Sunita and deceased also lived during their service.

PW8, who alleges himself as brother of Sunita also came to see her in Court Saharanpur. D.W.1 Aruna, sister of Sunita also stated that Mukesh has taken possession of the house of her father, but it is not clear that what sort of enmity Mukesh Rawal had

with Sunita. It was not established by the defence, so this defence taken by Sunita is not probable. Accused Raju has taken the plea that he has been falsely implicated in the case and he has been arrested at his house.

It is also submitted that PW8 has stated that police has arrested the accused from Delhi after two days. Accused Amit Chopra had taken the defence that he has been falsely implicated. Jija of Sunita came with the police and arrested him at his home. Brother of Sunita lives in his mohalla. Contrary to this, PW9, Investigating Officer of the case has deposed that at the pointing of Sunita and Sandeep, he arrested Amit, Raju and Dinesh from roadways bus stand Saharanpur nearby Neelam Hotel. It is also submitted that place of arrest of the accused is suspicious, but this will not affect the prosecution case. Place of arrest is not so material. Main question is the role of the accused in committing the crime.

It is also submitted that prior to the incident, two persons also came at the house of the deceased who want to know about Charanjeet. Investigating Officer has not traced those two persons. This fact will not damage the case of prosecution.

PW6 Sandeep is the neighbour of Sunita. He is a hostile witness. He has not seen any person in the intervening night of 18.04.2004 at 11:30 pm and he also denied that accused were arrested before him. He has not supported the case of prosecution. But his evidence is not in a position to support the defence.

P.W.7 Bina Devi is tenant in the house of the deceased and she has stated that it is true that the information of murder was given by Sunita to her about 3-3½ years ago. She has not seen the persons who came in the night. But in the cross-examination, she has stated that she has given statement to the Investigating Officer that three males had come, whom Aunty (Sunita) was stating to be her relative from Delhi. She has also given statement to the Investigating Officer that at 07:00 am, landlady Smt. Sunita came in her room and told that four criminals came in the night, they made her unconscious and committed murder of her husband. Although, this witness is hostile witness but in the crossexamination, the said evidence is also relevant and supports the case of prosecution.

On the basis of above discussion, we are of the view that chain of evidence is complete in this case. Extra-judicial confession made by the accused Sunita is corroborated by the other circumstantial evidence. The only hypothesis is that accused Amit Chopra, Raju and Sunita has committed gruesome murder of Charanjeet with planning and cool mind. Thus, prosecution has proved beyond reasonable doubt that accused Sunita, Amit Chopra and Raju has committed the murder of Charanjeet in intervening night of 17/18.04.2004.

In our opinion, the guilt of appellants has been established by the prosecution beyond reasonable doubt and their acquittal would result in grave miscarriage of justice. There is no manifest error or illegality in the finding of the trial court.

In the result, the judgment and order of the trial court dated 21.08.2008 passed by the Special/Additional Sessions Judge, Court No.4, Saharanpur in Sessions Trial No. 294 of 2004, arising out of Case Crime No. 206 of 2004 (State Vs. Sunita & others), Police Station Kotwali Nagar, District Saharanpur convicting and sentencing the appellants to undergo life imprisonment under Section 302/34 of India Penal Code with a fine of Rs.10,000/- each, in default thereof, to undergo three months additional imprisonment, is hereby confirmed.

During appeal, appellants Sunita, Amit Chopra and Raju had remained in judicial custody. They are directed to serve out the remaining period of sentence.

The appeal under Section 302/34 is devoid of merits and accordingly **dismissed**.

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