

**A.F.R.**

**Reserved on 25.02.2022**

**Delivered on 11.03.2022**

**Case :-** CRIMINAL APPEAL U/S 372 CR.P.C. No. - 248 of 2022

**Appellant :-** Raj Kumar Verma

**Respondent :-** State of U.P. and Others

**Counsel for Appellant :-** Rajiv Gupta, Dileep Kumar, Rajrshi Gupta, Shristi Gupta

**Counsel for Respondent :-** Govt. Advocate

**Hon'ble Vivek Kumar Birla J.**

**Hon'ble Subhash Vidyarthi J**

**(Per Hon'ble Subhash Vidyarthi,J.)**

1. By means of this appeal filed under Section 372 Cr.P.C. the Appellant has challenged the judgement and order dated 29-09-2012 passed by the Additional Session Judge, Court Number 10, Bijnor, acquitting the accused / respondents Number 2 to 6 of all the charges levelled against them.

2. Briefly stated, the prosecution case is that on 26/12/2009 the Informant - Appellant gave a report to the police stating that he resides in village Khaspura police station Haldaur and he runs a jewellery shop in Kasba Chandpur under the name and style of 'Khaspura Jewellers' along with his 21 years' old son Deepak Verma. Both of them used to come daily from village Khaspura to Chandpur on a motorcycle. On 26/12/2009, he and his son had come to the shop at Chandpur. He had to go with some persons campaigning of MLC elections. At about 3:00 PM he kept some articles of jewellery in a steel box and gave the same to Deepak Verma after putting it in a cloth bag and asked him to go home on his motorcycle taking the goods with him. The Informant went for the election campaign While his son Deepak Verma was going on the Hero Honda Super Splendour motorcycle after closing the shop, some unidentified miscreants fired at and killed his son on Chandpur -

Paijaniya road a short distance ahead of the railway crossing. The miscreants robbed the jewellery and ran away. He came to know from the neighbours of the shop that Deepak Verma had started for Khaspura after closing the shop at about 4:30 PM on his motor cycle, taking the bag with him.

3. Upon the aforesaid information, a First Information Report was lodged under sections 394 and 302 IPC against unknown miscreants. During investigation on 09-02-2010, the Informant gave an application to the District Magistrate, Bijnor stating that a veterinary hospital was being constructed in his village Khaspura. It was to be constructed on 3,900 square meters area, but the Chief Veterinary Officer and the Contractor were constructing the same only on 1,000 square meters land. The land on which the hospital was being constructed was the land on which a fair was held. The Informant had given a complaint regarding this to the District Magistrate and he had filed a Public Interest Litigation in the High Court at Lucknow and the Court had issued a direction to the Principal Secretary, Animal Husbandry, to pass suitable orders on the petitioners representation. Ultimately his representation was rejected and since after the murder of his son the construction of the hospital has gained peace. The Informant stated that the Chief Veterinary Officer, Bijnor and the contractor who was constructing the hospital, had got his son killed under a conspiracy.

4. After investigation a charge sheet under section 394 302 read with section 35 C was filed on 18-10-2011 against the accused respondents number 2, 3 and 4 and on 12-12-2011 another charge sheet under the aforesaid sections was filed against the accused respondent number 5.

5. After examining the evidence on record, the learned court below came to a conclusion that neither any person had seen the accused respondents committing the robbery and murder on the place of the incident nor any of the articles robbed from the deceased was recovered

from any of the accused persons. No prior animosity of the Informant against the accused respondents could be proved. There is no evidence on record to establish any connection of the accused persons with the Chief Veterinary Officer and the contractors Pradeep Yadav and Vinod Yadav and there is no evidence of the Informant's son Deepak Verma having been killed because of any conspiracy of the aforesaid persons.

6. On the basis of the aforesaid analysis, the learned Court below recorded a finding that the prosecution could not prove the charges against the accused respondents beyond reasonable doubt and, accordingly, by means of the judgement and order dated 29-09-2012 it acquitted all the accused respondents.

7. The Informant Appellant has filed the instant appeal against the aforesaid judgment and order dated 29-09-2012.

8. The appeal was listed on 08-02-2022, on which date no one had appeared on behalf of the Appellant. The court passed an order disposing of the application under Section 378 (3) and the appeal was directed to be listed for admission peremptorily. Thereafter it was listed on 23-02-2022 on which date again no one appeared on behalf of the Appellant even in the revised call and the court passed an order directing the office to allot a regular number to the appeal and the case was ordered to be listed on 25-02-2022 peremptorily.

9. On 25-02-2022 again, no one appeared for the Appellant even in the revised call and the court proceeded to peruse the record with the assistance of the learned A.G.A. and the judgment was reserved.

10. We have examined the grounds of appeal and the lower court record. The Informant Appellant has challenge the judgment and order dated 29-09-2012 on the ground that it is illegal and without jurisdiction and the trial court has misread, misinterpreted and mis-appreciated the evidence on record.

11. In *Jayamma v. State of Karnataka, (2021) 6 SCC 213*, the Hon'ble Supreme Court has reiterated the manner in which the High Court should exercise its power of scrutiny in an appeal filed against an order of acquittal, in the following words: -

“the power of scrutiny exercisable by the High Court under Section 378 Cr.P.C. should not be routinely invoked where the view formed by the trial court was a “possible view”. The judgment of the trial court cannot be set aside merely because the High Court finds its own view more probable, save where the judgment of the trial court suffers from perversity or the conclusions drawn by it were impossible if there was a correct reading and analysis of the evidence on record. To say it differently, unless the High Court finds that there is complete misreading of the material evidence which has led to miscarriage of justice, the view taken by the trial court which can also possibly be a correct view, need not be interfered with. This self-restraint doctrine, of course, does not denude the High Court of its powers to reappraise the evidence, including in an appeal against acquittal and arrive at a different firm finding of fact.”

12. We proceed to examine the record of the case to ascertain as to whether the view taken by the Court below in the judgment and order under challenge is a possible view or whether the findings of the Court below are perverse and warrant interference by this Court.

13. The Informant Raj Kumar Verma - PW - 1 stated in his examination-in-chief, that after the incident he came to know that since 4 days before the murder of his son, he used to see 4 boys standing ahead of the railway crossing at the place where he has been killed and those persons are the accused respondents number 2, 3, 4 and 5. However, the Investigating Officer Gurdeep Singh Grewal (PW - 7) has stated that he took over investigation of the case on 26/12/2009, i.e. the date on which the FIR was lodged. The investigation was transferred from him on 10/1/2010 but during this period, the Informant did not name any accused person. After PW - 7, the investigation was taken over by PW - 8 Raj Kumar Bhardwaj who also stated that the Informant did not name any person. PW - 9 Dhan Pal Singh, who took over investigation after Raj Kumar Bhardwaj, also made a similar statement.

On 09/10/2010 the Informant gave an application to the District Magistrate and in that also there was no mention of this fact. This indicates that the statement of PW - 1 naming the accused-respondents 2 to 5 and alleging that they used to keep on standing near the place of the incident since four days before the same, is false.

14. Although in the application dated 09-02-2010 given by Informant Appellant it was alleged that he had given a complaint against the Chief Veterinary Officer and the contractors Pradeep Yadav and Vinod Yadav and had expressed suspicion that the aforesaid persons have got his son killed under a conspiracy, but he did not give any statement to this effect during investigation. No material came to light during investigation indicating involvement of the aforesaid persons in the incident and no charge sheet was submitted against them. The Informant Appellant gave evidence to prove this allegation for the first time in his examination-in-chief, which is not corroborated by any other material. Therefore, this allegation of the Informant / Appellant appears to be without any basis.

15. The Informant / Appellant PW - 1 has admitted the inquest report, which mentions that ₹24,411/- cash was recovered from the deceased's pocket, 2 gold rings were recovered from his hand and some documents in his pocket were recovered from his pocket and the motorcycle and its key was also recovered lying near the place of occurrence. Had the deceased been killed with the intention of committing robbery, the miscreants would have taken away the cash, gold rings and motorcycle etc.

16. Although the Informant - Appellant stated in the report that he had given some items of jewellery put in a steel box kept in a cloth bag to the deceased to be taken home, he has stated in evidence that the deceased did not leave the shop in his presence and no witness has stated that he saw the deceased taking away the items with him. In absence of

any evidence to this effect, the aforesaid allegation has also not been proved by the prosecution.

17. Therefore, the learned Court below has rightly recorded a finding that from the statement of the Informant Appellant PW - 1, no allegation against the accused respondent number 2 is established and we find that the aforesaid at finding is not at all perverse.

18. PW - 2 Ram Kishan Verma, a Brother-in-law of the Informant, stated that on 26/12/2009 he was going in a bus from Nehtaur to Chandpur in a bus. While sitting in the bus he saw some persons assaulting the deceased. He asked to stop the bus the bus didn't stop and he heard a gunshot. When the bus stopped at the railway-crossing, he got off it and went to the place of occurrence and he saw that Deepak Verma was lying dead and the 3 miscreants runaway on a motorcycle. Similar statements have been given by PW - 3 Surendra Verma, who is also a brother-in-law of the Informant. However, in his cross-examination PW - 2 has stated that he saw the incident through a window of the bus and the bus stopped about half kilometre away. PW - 2 and PW - 3 have stated that they sated at the place of the occurrence for about 20 - 25 minutes. They left after the police reached there and they did not make any phone call to the Informant regarding the incident. The police took away the dead body and they did not go with the police. This conduct of the aforesaid witnesses in not informing the police or the Informant about having seen the incident, is highly unnatural and indicative of the fact that they did not see the incident send their statement is false.

19. PW - 2 Ram Kishan Verma has stated that all the accused persons had gone to him at his home on 25-04-2011 and stated that they have killed Deepak Verma by mistake; the police was harassing them and they requested the PW - 2 to help in settling the matter, But in his cross-examination, he has shown ignorance about the date and even the month in which the accused persons had gone to his home. He also did not state

as to when did he give information of the visit of the accused persons to his home to the Informant. From this, it appears that the statement of the witness is false.

20. It is settled law that an extra-judicial confession is a very weak piece of evidence and it has to be examined with extra care. In **Shailendra Rajdev Pasvan v. State of Gujarat**, (2020) 14 SCC 750 the Hon'ble Supreme Court reiterated the well settled law regarding extra judicial confessions in the following words: -

“ 20. In *Sahadevan v. State of T.N.* [*Sahadevan v. State of T.N.*, (2012) 6 SCC 403 : (2012) 3 SCC (Cri) 146] referring to the aspect of evidentiary value of extra-judicial confession, it was observed : (SCC p. 410, para 14):

“14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.”

21. Elaborating on the jurisprudence that has evolved with regard to extra-judicial confessions, this Court in *Sahadevan v. State of T.N.*, (2012) 6 SCC 403 : (2012) 3 SCC (Cri) 146] had stipulated the principles that are required to be kept in mind while relying on extra-judicial confession as evidence. These principles have been succinctly mentioned in *Jagroop Singh v. State of Punjab* [*Jagroop Singh v. State of Punjab*, (2012) 11 SCC 768 : (2013) 1 SCC (Cri) 1136] as : (SCC p. 780, para 30)

“30. Recently, in *Sahadevan v. State of T.N.* [*Sahadevan v. State of T.N.*, (2012) 6 SCC 403 : (2012) 3 SCC (Cri) 146] , after referring to the rulings in *Sk. Yusuf v. State of W.B.* [*Sk. Yusuf v. State of W.B.*, (2011) 11 SCC 754 : (2011) 3 SCC (Cri) 620] and *Pancho v. State of Haryana* [*Pancho v. State of Haryana*, (2011) 10 SCC 165 : (2012) 1 SCC (Cri) 223] , a two-Judge Bench has laid down that the extra-judicial confession is a weak evidence by itself and it has to be examined by the court with greater care and caution; that it should be made voluntarily and should be truthful; that it should inspire confidence; that an extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence; that for an extra-judicial confession to be the basis of

conviction, it should not suffer from any material discrepancies and inherent improbabilities; and that such statement essentially has to be proved like any other fact and in accordance with law.”

21. PW 9 Investigating Officer Dhan Pal Singh has stated that till 16-05-2010, the name of any accused persons had not come to light. The name of the accused persons has been included after about an year after the incident on the basis of an alleged extrajudicial confession made by all the accused persons by going to PW-2 on 25-04-2011 and confessing the incident allegedly occurred on 26-12-2009, which is highly unnatural and which was not corroborated by any other evidence. Therefore, we are of the view that the said extra judicial confession does not appear to be reliable so as to prove the guilt of the accused / respondents beyond reasonable doubt.

22. From a thorough scrutiny of the statement of witnesses, we are of the considered opinion that the prosecution could not establish the guilt of the accused respondent number 2 to 5 and the findings of the Court below in this regard do not suffer from any infirmity and the same are not at all perverse and do not call for interference of this Court in exercise of its appellate jurisdiction.

23. The appeal lacks merits and is accordingly dismissed at the stage of admission itself.

**Order Date:** 11.3.2022

Ashish Prasad