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**(1975) 01 RAJ CK 0021**

**Rajasthan High Court**

**Case No:** Criminal Appeal No. 566 of 1970

Dhobli

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision:** Jan. 1, 1975

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302

**Citation:** (1975) 8 WLN 352

**Hon'ble Judges:** M.L. Shrimal, J; C.M. Lodha, J

**Bench:** Division Bench

**Final Decision:** Allowed

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### **Judgement**

C.M. Lodha, J.

The appellant Dhobli has been convicted by the learned sessions Judge, Jodhpur u/s 302 I.P.C., for causing the murder of her husband Dheemaram and has been sentenced to imprisonment for life.

2. The facts of the case lie within a very narrow compass. On the night between 2nd and 3rd May, 1969 Dheemaram was killed while sleeping on his cot in the court-yard of his "Dbaoi" situated at a distance of about 6 miles from village Lohawat. The prosecution case is that there were strained relations between the deceased and his wife Smt. Dhobli (accused) and therefore she killed him by inflicting a number of injuries with an axe. A First Information Report of the occurrence was lodged by PW/1 Ghamuram, Ward Panch of Lohawat at the Police Station Lohawat at 5.00 p.m. on 3rd May, 1969. It was stated in the First Information Report that while Ghamuram was at "Chotina" well, one Baburam came to him at about 10.00 a.m. on 3rd May, 1969 and told him that he had been summoned by Pokar Ram PW/3 and Mughla PW/2 to the house of the deceased Dheemaram, where Dheemaram lay dead in a pool of blood, though it was not known how all this had happened. It is further stated in the First Information Report that Ghamuran at once proceeded to

Dheemarams Dhani, where he found Pokar Ram, Mughla and the accused sitting near the cot on which Dheemaram's body was lying and then on Ghamuram's questioning as to how Dheemaram had been killed, the accused replied that s/he had done him to death by inflicting blows with an axe. Ghamuram then left the house of the deceased for lodging. First Information Report. PW/11 Samratbsingh. Station House Officer, Police Station Lohawat reached the scene of occurrence on 4th May, 1969 at about 10 00 a. m. and arrested the accused who was there and sent the dead body of Dheemaram for post-mortem examination. After interrogating the witnesses and on receiving the post-mortem report the Station House Officer challaned the accused in the court of Munsiff Magistrate, Phalodi for offence u/s 302 I.P.C.

3. In course of trial, the prosecution relied upon evidence regarding extra judicial confession alleged to have been made by the accused. The accused denied having committed the offence. The learned Sessions Judge, however, found extrajudicial confession proved and held that it was corroborated by other circumstantial evidence. In the result, he convicted and sentenced the accused as stated above.

4. That Dheemaram died in the night intervening 2nd and 3rd May, 1969 on account of the injuries found on his body is a matter beyond dispute and the only question is who was the perpetrator of this crime. Learned Counsel for the appellant has strenuously urged that the evidence regarding extra judicial confession alleged to have been made by the accused is wholly unreliable. He has contended that there are material discrepancies in the statements of the witnesses on the point of extra judicial confession and further that there is absolutely no corroboration of the extra judicial confession worth the name. He has also argued that extra judicial confession is a weak type of evidence and the court should be very cautious in accepting the same and in any case it should not be made the basis of conviction, unless it is corroborated by reliable evidence.

5. In *Wakil Nayak v. State of Bihar* 1972 Cri. A.R. it was observed that before the Court acts on extra judicial confession, the circumstances under which the confession is made, the manner in which it is made, the persons to whom it is made be considered along with the two rules of caution. First, whether the evidence of confession is reliable and secondly whether it finds corroboration. We are aware of a subsequent pronouncement of their Lordships of the Supreme Court, in [Maghar Singh Vs. State of Punjab](#), wherein it was observed that the evidence furnished by extra judicial confession made by the accused to witnesses cannot be termed to be a tainted evidence and if corroboration is required, it is only by way of abundant caution. If the Court believes the witnesses before whom the confession is made and it is satisfied that the confession was voluntary, then in such a case conviction can be founded on such evidence alone. The observations made in [Maghar Singh Vs. State of Punjab](#), in our humble opinion, do not, in any way, detract from the principle laid down by their Lordships of the Supreme Court in the earlier case. Thus,

the two rules of caution in the matter of acting upon extra judicial confession laid down by their Lordships are : (1) that the evidence of confession must be reliable and free from infirmity and (2) it must find corroboration.

6. Now, in the present case the prosecution seeks to prove that the accused made extra judicial confession first to Mughla, Pokar Ram, Mamraj and Markin. PW/1 Ghamuram has stated that when he reached the "Dhani" of Dheemaram, deceased he found Mughla, Pokar Ram, Mimraj and Markin sitting there and on enquiring from them as to what had happened to Dheema, they replied that upon their questioning, the accused had disclosed that she had murdered her husband. PW/2 Mughla does not say a word that any such confession had been made in his presence. PW/3 Pokar Ram, on the other hand, states that he did not enquire from the accused as to what had happened to Dheema, but it was Ramudi who had asked the accused in his presence as to who had killed Dheema. Mamraj PW/7 has also not said a word about any confession having been made by the accused in his presence. Thus, there is no proof that the accused made any confession to Mughla, Pokar Ram, Mamraj and Markin on their questioning her regarding the death of the deceased. It may be relevant, here, to point out that the First Information Report was admittedly made after the confession is alleged to have been made to these four witnesses. But there is no mention of the same in the reports. Further on, PW/1 Ghamuram has stated that when he went to the Dhani" of the deceased, he saw Smt. Dhobii sitting inside her hut and he took her aside and asked her what had killed Dheema. Thereupon, she replied that she had murdered Dheema with an axe and asked the witness to do whatever he liked. The witness further states that on her asking why she killed her husband, she replied that a quarrel had ensued between her and her husband and for Rs. 2/. This talk obviously took place in the presence of Mughla, Pokar Ram, Mamraj and Markin, but surprisingly enough, no one of them has made reference to such a talk having taken place in their presence between Ghamuram and the accused. On the other hand, PW/3 Pokar Ram has stated that in his presence no other person except Smt. Ramudi talked to the accused. We shall advert to this alleged talk with Ramudi later on, but for the present, we wish to point out that Pokar Ram completely excludes any talk having taken place between the accused and Ghamuram. The statement of Ghamuram, therefore, to the effect that the accused had confessed her guilt to him cannot be relied upon.

7. As already stated earlier, PW/2 Mughla and PW/7 Mamraj do not make mention of any confession having been made by the accused in their presence. PW/3 Pokar Ram has given altogether a different version. He states that he did not enquire from the accused as to what had happened to Dheema the deceased, but Ramudi PW/4 had asked the accused in his presence as to who had killed and thereupon the accused replied that she had killed her husband. This witness has stated that he heard the accused confessing her guilt to Smt. Ramudi. However, in cross-examination, the witness has admitted that he could not hear the talk which

transpired between Smt. Ramudi and the accused, though in the next sentence he has stated that he had heard the accused saying that she had killed her husband Dheemaram. It may be mentioned here, that there is no reference in the First Information Report to any confession having been made by the accused to Smt. Ramudi which seemed to have been introduced only in the course of evidence. We find it necessary to mention, that, because the First Information Report was made after the alleged extrajudicial confession had been made and Ghamuram, who had been to the scene on occurrence, must have been apprised of the confession made to Smt. Ramudi. He would have surely mentioned this fact in the First Information Report, if, in-fact, the story about making extra-judicial confession to Smt. Ramudi were correct.

8. We shall now turn to the statement of PW/4 Smt. Ramudi. She states that she is the grandmother (though distantly related) of the deceased. Her statement is that early in the morning accused came to her "Dhani" and informed her that blood was coming out of Dheema's mouth and nostrils, On receiving this information, she went to the house of the deceased and having seen Dheema lying dead in a pool of blood, she rushed to call Pokar her husband's nephew. She states that she and Pokar questioned the accused how Dheema had been killed and thereupon the accused replied that she had murdered him because a quarrel had taken place between them over a sum of Rs. 2/. Then she went to bring Mughla, but from Mughla's house she straight went to her own house. This witness does not strike us as a truthful one. Her conduct appears to us to be most unnatural, inasmuch as she has stated that before the arrival of Pokar she had not talked with the accused about the murder of the deceased. Again her behaviour in going away straight to her house from Mughla's house and not returning to the scene of occurrence is another abnormality on account of which we do not feel persuaded to believe her evidence. Then again, she has introduced altogether a new version namely; that she and Pokar had questioned the accused about the death of Dheema, but neither Pokar nor any other witness has supported this version. In her statement in the committing court Ex. D/3 she had given a still different version namely, that when the accused confessed to her to have murdered Dheema, no other person was present. When she was confronted with this statement and called upon to explain the discrepancy, she had no answer except to say that she did not give such a statement in the committing court. A little later, in the cross-examination, she has stated that Pokar did not talk to the accused that day. In her Police statement Ex. D/4 it is not mentioned that Pokar and she had questioned the accused as to who had killed the accused. Her statement is self-condemnatory and at any rate she is not a witness, who can be relied upon, particularly when her statement is not supported by other witnesses. This is all the evidence regarding extra judicial confession alleged to have been made by the accused and, in our opinion it is wholly unworthy of reliance and full of infirmity. We are unable to place any reliance on such a weak type of evidence which is not at all inspiring of confidence. This finding itself is

sufficient for disposal of the appeal. However, since the learned Sessions Judge has made mention of four circumstances which, according to him, corroborate the extra-judicial confession, we propose to deal with them briefly.

9. The first circumstance mentioned is that five incised wounds were found on the dead body which could be caused by an instrument like an axe. It would not be out of place, here, to point out that even though an axe was recovered at the instance of the accused, no blood stains were found on it and, therefore, the learned Sessions Judge has made no use of this recovery and, in our opinion, rightly. The presence of the five incised wounds only shows that injuries were inflicted by a shrouded weapon, but this is no circumstance to connect the accused with the crime.

10. The second circumstance pressed into service by the learned Sessions Judge is that the relations between the accused and the deceased were strained. We have looked into the evidence of Met. Jamu PW/5 and Mamraj PW/7 on this point. All that these witnesses have stated is that some time before the occurrence, say about a month, the accused had gone to them and told them that she was being treated cruelly by her husband. The evidence is altogether vague and does not furnish any approximate cause for commission of the murder of her husband by the accused. This circumstance, in our opinion, does not advance the prosecution case at all,

11. The third circumstance mentioned by the learned Judge is that the accused used to live with the deceased in the house prior to the incident and, therefore, she had an opportunity to commit the crime. The prosecution has not shown that on the night of occurrence the accused alone was in the house and no body else had come there. Mere fact that the deceased and the accused were husband and wife and ordinarily must be presumed to be living together does not raise any such presumption that the accused alone was with the deceased on the night when the occurrence took place.

12. The fourth and the last circumstance referred to by the learned Sessions Judge is that the accused did not weep or raised hue and cry in the morning when she saw her husband lying in a pool of blood on the cot inside the "Dhani." This circumstance may be explicable on more than one hypothesis and is not incompatible with her innocence. At any rate it cannot go beyond a lurking suspicion.

13. Having carefully examined the evidence produced by the prosecution, we have come to the conclusion that the prosecution has failed to bring home guilt to the accused and she is entitled to benefit of doubt.

14. The result is that we allow this appeal, set aside the conviction and sentence passed against the accused and hereby acquit her. She shall be released forthwith, if not required in connection with any other case.