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**(1998) 08 AHC CK 0162**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Criminal Appeal No. 507 of 1996

Vashishth Muni Pathak

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** Aug. 20, 1998

**Acts Referred:**

- Evidence Act, 1872 - Section 24
- Penal Code, 1860 (IPC) - Section 201, 21, 302

**Citation:** (1999) CriLJ 3723

**Hon'ble Judges:** I.P. Vashishth, J; D.K. Trivedi, J

**Bench:** Division Bench

**Advocate:** Govt. Advocate, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

D.K. Trivedi, J.

The present criminal appeal is filed by Bashisht Muni against the judgment and order dated 18-9-96 passed by the II Addl. Sessions Judge, Sultanpur convicting the appellant Under Sections 302 21, IPC and sentencing him to Imprisonment for Life and three years" R.I. respectively. Both the sentences were directed to run concurrently.

2. According to the prosecution case, Lalta Prasad, the father of the complainant Dinesh Chandra Tiwari left the village Loniyaapur to Sitarampur at about 4 p.m. but he did not reach village Sitarampur. On 12-2-94, at about 5 p.m. one Ram Lal Pathak resident of village Sitarampur gave an information to the complainant that the deadbody of Lalta Prasad is lying in a well situated near the canal passing through village-Usary, hamlet of jungle Ram Nagar. On receipt of this information, complainant Dinesh Chandra-Tiwari immediately proceeded to the spot along with his brother and found that the deadbody of his father was lying in the well. He thereafter, went to the police station and lodged the F.I.R. at P.S. Amethi on 12-2-94

at about 7 a.m. The distance of the police station Amethi is about three Kms. from the place of the incident. The complainant further disclosed in the F.I.R. that Lalta Prasad had inherited certain land in village-Sitarampur from the side of his maternal-grandfather and in respect of that land there was litigation between his father and Bashisht Muni (the accused) who is relative of his maternal uncle. It is said that a decree was passed in favour of Lalta Prasad. The report was lodged in presence of P.W. 9 S.I Bhuwaneshwar, therefore the investigation was entrusted to him. He immediately recorded the statement of the complainant and thereafter proceeded to the place of the incident and got the dead body of deceased Lalloo Prasad removed from the well with the help of persons present there. He also recovered the cycle of the deceased from the spot. The Investigating Officer prepared the inquest report as well as other relevant papers Exts. Ka-2 to Ka-6 and thereafter, sent the deadbody for autopsy to mortuary. The Investigating Officer prepared the "Fard" of the cycle of the deceased as Ext. 10. He also prepared the site plan Ext. Ka11 and interrogated the witnesses. The investigation of the case was thereafter, handed over to P.W. 5 S.I. Sukh Ram Sonkar who on completing the investigation submitted the charge sheet against the accused-appellant.

3. The autopsy on the deadbody of deceased Lalta Prasad was conducted by P.W. 6 Dr. C.P. Tiwari on 13-2-94 at about 3.30 p.m. The doctor found the following ante mortem injuries on the dead body of deceased Lalta Prasad :-

1. Lacerated wound 2 cm x 1/2 cm x bone deep just above left eyebrow.
2. Lacerated wound 1 1/2 cm x 1 cm x bone over just above root of nose.
3. Lacerated wound 2 cm x 1 cm x bone deep over right parietal region 8 cm above from right ear.
4. Lacerated wound 2 cm x 1 cm x cavity deep just below right eyebrow over right eyeball.
5. Lacerated wound 2.5 cm x 1 cm x bone deep 1 1/2 cm lateral to right eye.
6. Lacerated wound 1 cm x 1 1/2 cm over right ala of nose.
7. Lacerated wound 2 cm x 1 cm over back of head 8 cm away from right ear.

4. On internal examination, the doctor found that the eyes and mouth of the deceased were semi opened and rigormortis was passed off from both the upper and lower limbs. The scalp of the deceased was also found lacerated and large and small intestines were found full of liquid, gases and faecal matters. According to the doctor the cause of death of the deceased was due to shock and haemorrhage as a result of ante mortem injuries.

5. The post mortem report is Ext. Ka-4.

6. The prosecution in support of its case examined as many as ten witnesses out of them; P.W. 1 Dinesh Chandra-Tiwari, is the complainant and son of the deceased. P.W. 2 Daya Shankar Shukla, is the scribe of the F.I.R. and he has proved the F.I.R. P.W. 3 Paras Nath Dubey and P.W. 4 Amar Nath are all witnesses of fact. P.W. 4 Amar Nath did not support the prosecution case, therefore, he was declared hostile. P.W. 5 S.I. Sukh Ram Sonkar had conducted investigation of this case later on and submitted charge sheet against the accused. P.W. 6 Dr. C.P. Tiwari had conducted post mortem examination on the dead body of Lalta and had proved the post mortem report Ext. Ka-4. P.W. 7 Ashok Kumar had proved the confessional statement of the accused and P.W. 8 Smt. Anar Kali is the widow of the deceased who was examined to prove the enmity with the accused regarding some landed property. P.W. 9 S.I. Bhuwaneshwar had initially conducted the investigation of this case and he proved the initial investigation of this case and P.W. 10 Ram Kawal Yadav, is the Head Constable who had proved the preparation of chik on the basis of the report and had also proved the G.D. entries (Ext. Ka-13).

7. On the other hand the accused has denied the prosecution case and has stated that he has been implicated in this falsely due to enmity.

8. The learned Sessions Judge after scrutinising the evidence on the record came to the conclusion that the prosecution has successfully proved the guilt of the accused beyond reasonable doubt and therefore, he convicted and sentenced the accused as mentioned above.

9. The accused-appellant aggrieved by the said judgment and order has preferred the instant criminal appeal.

10. As the present Criminal Appeal was filed from jail., therefore, this Court appointed Sri Shrawan Kumar Advocate as Amicus Curiae to argue the case on behalf of the accused-appellant.

11. We have heard the learned counsel for the parties and have also gone through the record carefully.

12. The main circumstances alleged to be proved by the prosecution are that;

13. The appellant had motive for committing this crime and for this purpose the prosecution examined P.W. 1 Dinesh Chandra Tiwari who is son of the deceased (Lalta Prasad), the complainant of this case. He stated that there was a dispute about the land inherited by the deceased from the side of his maternal grandfather and the said dispute was decided in favour of the deceased. Apart from this, P.W. 8 Smt. Anar Kali widow of the deceased (Lalta Prasad) was examined to prove the motive as well as the fact that after committing murder of her husband by the accused (Bashisht Muni), she heard that Bashisht Muni was talking and saying that now the way is clear for ever "(sic)"

14. P. W. 3 Paras Nath Dubey was examined to prove that he saw deceased Lalta Prasad talking with the accused two days before the murder near the canal of Ram Nagar. P.W. 7 Ashok Kumar was examined to prove the extra judicial confession allegedly made by the accused to him admitting his guilt. Apart from this, the other witnesses are formal in nature. The doctor proved the post mortem report and the police officer proved the investigation of this case as well as the entries made in the G.D. etc.

15. So far as the question of motive is concerned, it is not disputed that there was a dispute about the land situated in village-Sita Rampur in between the deceased on one side and the accused on the other. It is admitted fact that the deceased had inherited the property of village Sita Rampur from the side of his maternal Grandfather and the accused is a pattidar of his maternal uncle. The prosecution case is that the deceased was killed due to this enmity, whereas, the accused stated that he filed a suit in respect of the property of village-Sita Rampur but the said suit was dismissed in non-prosecution and therefore, there was no dispute about the land of village-Sita Rampur.

16. In any case, even we accept that there was some ill-will between the parties about the land of village-Sita Rampur, the question is as to whether the accused committed this crime for this purpose or not? On this ground, the evidence of P.W. 3 Paras Nath Dubey is of no help to the prosecution, P.W. 3 Paras Nath Dubey stated that he saw the deceased talking with the accused alongwith one more person near the canal of Ram Nagar two days before this incident. The learned Sessions Judge relied upon this circumstance as last seen but in our opinion, the same cannot be said to be last seen. P.W. 3 Paras Nath Dubey clearly stated that he saw the deceased in the company of the accused two days before the murder and therefore, on the basis of this statement, it cannot be said that the deceased was last seen with the accused. Apart from this, he further stated that after some talks, they all went to their own different sides. He has also admitted that family terms of both these persons (the deceased and the accused) were good and there was no dispute among them.

17. In view of the above mentioned facts and specially when this witness (P.W. 3 Paras Nath Dubey) has clearly stated that after some talk, they went to their own sides and further he did not say that they left the place together, or in witness or on a sour note, in our opinion, from this circumstance, it cannot be said that the deceased was last seen in the company of the accused and therefore, this circumstance also falls and-the learned Sessions Judge has committed an error in relying on this circumstance against the accused-appellant.

18. The last circumstance is an extra judicial confession. Section 24 of the Evidence Act clearly provides that if, the confession has been made by any inducement, threats or promise then the same cannot be relied upon against the accused.

19. On the other hand, the extra judicial confession is admissible in evidence if, the same is made voluntarily. It is the duty of the Court to get satisfied that the confession which is now retracted was made voluntarily and true.

20. Apart from this, it is also necessary to keep in mind as to whom the confession is made. It is natural thing that a person if, commits an offence then, he would go to a person whom he could repose such a confidence. It is not possible to believe that a person if, commits some offence, would go to any person and confess his guilt with whom he has no relation or such terms on which it can be said that he had confidence in him and for this reason he made such confessional statement. The Hon"ble Supreme Court in a case of [Rahim Beg and Another Vs. State of U.P.](#), took a similar view and thereafter, recently, in a case of [Jaspal Singh alias Pali and others Vs. State of Punjab](#), the Hon"ble Supreme Court observed that at p. 334 of AIR:

15. The third contention of Mr. Sodhi viz. that it is highly improbable that Jaspal Singh (A-1) would have gone to this witness with his co-accused to confess the guilt, is equally formidable. Chhota Singh (P.W. 7) has not given any reason as to why and how Jaspal Singh (A-1) and other co-accused have reposed such a confidence in him and confessed their guilt. After going through the evidence of Chhota Singh (P.W. 7), we do not find it safe to hold any of the appellants guilty in the present crime.

21. In the instant case, there was no history of previous association between P.W. 7 Ashok Kumar and the accused which may justify the inference that the accused could repose confidence in him.

22. P. W. 7 Ashok Kumar also did not say anything to prove that he had some connection with the accused, P.W. 7 Ashok Kumar resides at a distance of a Km. from the house of accused Bashisht Muni. He is also not related to Bashisht Muni (the accused). He has also denied any influence over the police or doing anything for the police. In these circumstances, it seems highly improbable that the accused would go to the house of P.W. 7 Ashok Kumar and confess his guilt. P.W. 7 Ashok Kumar also admits that when, after confessional statement, he had refused to help the accused then, he left his (Ashok Kumar's) house saying that he would take help of some other person. In these circumstances, the evidence of P.W. 7 Ashok Kumar does not inspire confidence. It is settled law that the evidence of extra judicial confession is a weak type of evidence. No doubt, the convictions can be based on extra judicial confession also but the value of the extra-judicial confession depends upon the veracity of the witness to whom it is made. The Hon"ble Supreme Court in a case of [Kavita Vs. State of Tamil Nadu](#), : [Kavita Vs. State of Tamil Nadu](#), took a view as under, at p. 2474 of AIR:

4. There is no doubt that convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence, it is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made. It may not be necessary that the actual words used

by the accused must be given by the Witness but it is for the Court to decide on the acceptability of the evidence having regard to the credibility of the witnesses.

23. In view of the facts stated above, this piece of circumstances also goes and cannot be relied upon against the accused-appellant. In our opinion, the learned Trial Judge has committed an error in convicting the accused-appellant Under Sections 302 201, IPC and sentencing him for Imprisonment for Life and three months R.I. respectively.

24. Accordingly, the present criminal appeal is hereby, allowed. The conviction and sentence awarded by the learned Trial Judge against the accused-appellant are hereby, set aside. The appellant is in Jail. Let he be set at liberty forthwith unless wanted in any other case.