HIGH COURT OF ORISSA: CUTTACK.

JCRLA No.78 of 2007

From the judgment of conviction and order of sentence dated 09.08.2007 passed by Smt. V. Jayashree, learned Additional Sessions Judge, Rourkela in Sessions Trial No.78 of 2006 (arising out of G.R. Case No.51 of 2006 of the court of the learned S.D.J.M., Panposh, corresponding to Lathikata P.S. Case No.4 of 2006.

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Renta Nag alias Shyam Sundar Nag ..... Appellant.

- Versus-

State of Orissa ..... Respondent.

For Appellant : Mr. Biswajit Nayak,
Amicus Curiae

For Respondent : Mr. G.N. Rout,
Additional Standing Counsel.

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P R E S E N T :

THE HONOURABLE SHRI JUSTICE S. K. MISHRA
AND
THE HONOURABLE MISS JUSTICE SAVITRI RATHO

S. K. MISHRA, J. This is a case of uxoricide. The appellant- Renta Nag alias Shyam Sundar Nag assails his conviction and sentence to suffer imprisonment for life and to pay a fine of Rs.2,000/- only, in

default, to undergo rigorous imprisonment for a further period of two months under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as "the Penal Code" for brevity) recorded by the learned Additional Sessions Judge, Rourkela in Sessions Trial No.78 of 2006 (arising out of G.R. Case No.51 of 2006 of the court of the learned S.D.J.M., Panposh, corresponding to Lathikata P.S. Case No.4 of 2006.

02. The prosecution case, in short, is that appellant- Renta Nag alias Shyam Sundar Nag and deceased-Basamati Nag were husband and wife. They were residing together in one house. There was some dispute between the deceased and the appellant in the night i.e. at about 09.30 A.M. of 09.01.2006 for which the appellant committed murder of the deceased by assaulting her by means of a crow bar and paniki (kitchen knife used for cutting vegetables). On 09.01.2006 the informant- Dasarath Gouda, the brother of the deceased, went to the house of the appellant and the deceased where he saw the dead body of his sister lying in the house and the appellant confessed before him that since there was a quarrel between each other, he assaulted the deceased by means of a crow bar and paniki, and killed her. The informant, therefore, lodged a report before the Inspector-In-Charge, Lathikata Police Station, Lathikata, District-Sundargarh. Since the report revealed

cognizable offence, the Inspector-In-Charge, Lathikata Police Station registered a case and directed the Sub-Inspector of Police M.M. Mallick to take up investigation. The Sub- Inspector of Police made a requisition for deputation of a Magistrate to hold inquest over the dead body of the deceased and on 10.01.2006 conducted inquest over the dead body; sent the dead body for post mortem examination; conducted raid and arrested the accused; recorded statement under Section 27 of the Indian Evidence Act, 1872, hereinafter referred as „the Evidence Act", for brevity, and seized the iron crow bar and „paniki" from the place of concealment. He also seized the sample earth; blood stained earth from the spot; made requisition to the Medical Officer for collection of sample blood and nail clippings and the same were collected; seized the wearing apparels of the deceased and the accused; made a prayer before the learned S.D.J.M., Panposh, to forward the exhibits for chemical examination and also made a requisition to the medical officer, who conducted post mortem examination, by sending the weapon of offence i.e. the crow bar and the paniki, for his examination and opinion, and after obtaining the chemical examination report and expert opinion of the doctor who conducted post-mortem examination, finding a prima facie case, submitted

charge-sheet against the accused/ appellant under Sections 498A and 302 of the Penal Code.

03. The appellant took the plea of complete denial of the allegations made against him. He further took the plea that he did not know how his wife died as he was not present in the house.

04. In order to establish its case beyond all reasonable doubt, the prosecution examined 9 witnesses. P.W.1 (Dasarath Gouda) happens to be the brother of the deceased and the informant in this case. P.W.2 (Droupadi Gouda) is the wife of the informant. She also stated about the post-occurrence scenario and alleged extra-judicial confession. P.W.4 (Madan Gouda) is a witness to inquest. P.W.5 (Abhiram Behera) is a witness to seizure of wearing apparels under Ext. 4. P.W.6 (Prasanta Swain) and P.W.7 (Subrat Ali) were examined to prove the disclosure statement made before the Investigating Officer. P.W. Nos.6 and 7 have not supported the case of the prosecution and have been declared hostile. P.W.8 (Rabindra Kumar Patel) is a Constable of Lathikata Police Station. He escorted the dead body for post mortem examination and after the post mortem examination he had produced the wearing apparels of the deceased before the Investigating Officer. P.W.3 (Dr. R.R. Sadwal) had conducted post mortem examination over the dead body of the deceased. P.W.9

(Madan Mohan Mallik), the Sub-Inspector of Police, Lathikata Police Station is the Investigating Officer. The prosecution also led into evidence 11 exhibits and 9 material objects to substantiate its case.

The defence, on the other hand, neither examined any witness nor relied upon any document to establish the defence case.

05. In this case, there is no dispute regarding identity of the dead body of the deceased which was subjected to post mortem examination by P.W.3. Learned Amicus Curiae also does not dispute the finding of the learned Additional Sessions Judge, Rourkela so far it relates to the homicidal nature of death of the deceased. Moreover, a conjoint reading of the evidence of P.W.3 (Dr. R.R. Sadwal), Ext.1- post mortem examination report, Ext.3- inquest report and Ext.2-the medical opinion on examination of weapon of offence, leaves no reasonable doubt that the deceased met a homicidal death.

06. Mr. B. Nayak, learned Amicus Curiae seriously disputing the finding of the learned Additional Sessions Judge, Rourkela that it is the accused/ appellant and no one else who has committed the murder of the deceased submits that the learned Additional Sessions Judge, Rourkela has not appreciated the

evidence available on record in its proper prospective and has come to the erroneous conclusion. Pointing out that there is no eye witness to the occurrence, learned Amicus Curiae further submits that the circumstances established in this case are not fully established and, therefore, there is reasonable doubt regarding complicity of the appellant in commission of the crime. He, therefore, urges to allow this appeal and to set aside the conviction and set the appellant free holding him to be not guilty.

07. Mr. G.N. Rout, learned Additional Standing Counsel for the State, on the other hand, submits that the circumstances of last seen theory and the leading to discovery of weapon of offence in this case have established the prosecution case beyond reasonable doubt.

08. There is no dispute in this case that the prosecution has not put forth any eye witness to establish its case. Instead the prosecution based its case on circumstantial evidence. The circumstances that have been accepted to have been established by the learned Additional Sessions Judge, Rourkela by the prosecution in this case are as follows:

i) Homicidal nature of death of the deceased;

ii) the undisputed fact that the appellant and the deceased were in the house in the alleged night; and

iii) leading to discovery of the weapon of offence M.Os. I and II on the disclosure statement of the accused recorded under Section 27 of the Indian Evidence Act, 1872 and finding of blood patches on the wearing apparels of the appellant.

So far as the 1st circumstance is concerned, there is no dispute that the death of the deceased was homicidal in nature. The 2nd circumstance is of much importance in this case, as the learned Additional Sessions Judge, Rourkela proceeded with the conviction that there were only two members of the family residing in the house on the date and time of the occurrence and they happen to be the deceased and the appellant. The learned Additional Sessions Judge, Rourkela further held that they were in the house in the alleged night is not disputed. However, a cross reference to the accused statement of the appellant reveals that no such question has been put to the appellant in his examination under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code" for brevity). To answer the 7th question that was asked him regarding his defence case, the appellant has categorically stated that he was not present at the time of occurrence. Therefore, it was erroneous on the part of the learned Additional Sessions Judge, Rourkela to come to a

conclusion that there is no dispute that the appellant and the deceased and/ or no one else was present in the alleged night of occurrence in their house.

09. The circumstance of the husband and the wife and/or none else was there in the house in the alleged night and on the next day discovery of the dead body of the deceased only with the appellant remaining there is a very strong circumstance and in the absence of any explanation, an adverse inference can be drawn. Like any other fact, this fact has also to be proved by the prosecution beyond all reasonable doubt. In this case, P.W.19 (Dasarath Gouda) who happens to be the brother of the deceased stated that on being informed by his friend that his sister had died, he himself, his mother, his wife and another villager had gone to the house of the accused and found the dead body of his sister lying in the house of the accused. P.W.1 who belongs to village Sonaparbat under Tangripali Police Station in the district of Sundargarh. Whereas the appellant is a resident of village Ergeda under Lathikata Police Station in the district of Sundargarh. P.W.1 has not specified the exact time of their reaching in the house of the appellant. It can be safely assumed that they must have reached there by the time the death body was already discovered.

P.W.2 (Draupadi Gouda), the wife of P.W.1 has given a slightly

different version. She stated that on 09.01.2006 at about 9.30 A.M. the accused came to her house and told them that on the previous night the deceased vomited blood and died. Hearing such information, she herself and her mother-in-law went to the house of the accused and sent information to her husband P.W.1 through his friend. Her husband also came to the spot at about 12.00 Noon. Then they entered into the house and found cut injuries on the body of the deceased. While they questioned, the accused admitted to have killed her by assaulting her by means of a crowbar and vegetable cutter. Thus, by the time the informant and his wife reached at the spot, the dead body of the deceased was already discovered and it is not the case of the prosecution that P.W.1 and his friend had seen the appellant-Renta Nag @ Shyam Sundar Nag along with the dead body.

10. The other materials available on record reveal that P.W.4 (Madan Gouda) is a witness to inquest. He has not said anything about any of the circumstances available on record. P.W.5 (Abhiram Behera) stated that he did not know anything about the incident. On 10.01.2006 the police seized the wearing apparels under seizure list Ext.4. P.W.6 (Prasant Swain) and P.W.7 (Subrat Ali) are the witnesses to the discovery statement, seizure of the weapon of offence and as stated earlier they have turned hostile.

P.W.8 (Rabindra Kumar Patel) is the police constable who had carried the dead body for post mortem examination. P.W.9 (Madan Mohan Mallik), the Sub- Inspector of Police, Lathikata Police Station is the Investigating Officer. This being the entire evidence on record, the court has to decide on the evidence given by P.Ws.1 and 2 and has to come to the conclusion that whether the prosecution has proved its case beyond reasonable doubt that in the night of occurrence the appellant and the deceased were only present and none else and immediately on the next morning the dead body was recovered from that house.

11. Having carefully gone through the entire materials on record, in the light of the arguments made by the learned Amicus Curiae as well as the learned Additional Standing Counsel, this Court is of the opinion that this circumstance has not been established by the prosecution beyond all reasonable doubt. It has been decided by the Hon"ble Supreme Court in the case of **Hanumant Govind Nargundkar and another -vrs.- State of Madhya Pradesh**: reported in 1952 (2) SC 343, wherein the Hon"ble Supreme Court has held as follows:

> "xx xx xx xx xx In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore, it is

right to recall the warning addressed by Baron Alderson to the jury in Reg. v. Hodge, (1838) 2 Lewin 227) where he said :

> "The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. Xx xx xx xx xx xx "

12. In a case which is based on circumstantial evidence, it is the duty of the prosecution to establish each and every circumstances beyond reasonable doubt. Further, in a case which is based on circumstantial evidence, the court must come to the conclusion that the circumstance has been established by the prosecution conclusively. Therefore, there is no material on record

that the prosecution has established its case beyond reasonable doubt that in the night between 9th and 10th January, 2006, only the appellant and the deceased were present in their house. It is also not established that in the next morning when the dead body of the deceased was discovered it was the appellant who present in the house. So, this circumstance is not proved by the prosecution beyond reasonable doubt.

13. The discovery of weapon of offence has been given much weightage by the learned Additional Sessions Judge, Rourkela. The Investigating Officer has stated that on 10.01.2006 he apprehended the appellant in the jungle near the Primary School of Ergeda. At about 1.30 P.M. he arrested the appellant. In police custody on that day at about 2.30 P.M. the appellant confessed to have killed his wife by means of a vegetable cutter (PANIKI) and a crowbar. He had concealed the weapon of offence under a heap of planks inside the bed room in a dark place. The appellant led him and other witnesses to the place of concealment and gave recovery of the crowbar and the PANIKI in presence of witnesses. Ext.7 is the relevant portion of that statement of the accused recorded by him under Section 27 of the Indian Evidence Act, 1872. Ext.7 reveals that the crowbar and the PANIKI were kept by the appellant under the wood heap in a dark place inside the bed room. Ext.3 reveals

that the dead body of the deceased was also lying in the same room. P.Ws.6 and 7, as stated earlier, have not supported the prosecution case and have been declared hostile.

14. The prosecution put forth the case that the Investigating Officer had prayed the learned S.D.J.M., Panposh to send the material objects for chemical examination to the State Forensic Science Laboratory, Rasulgarh, Bhubaneswar, Odisha. However, the forwarding report has not been exhibited in this case. The Investigating Officer has also not said as to how material objects 18 in numbers were sent to the Regional Forensic Science Laboratory, Ainthapalli, Sambalpur for chemical examination. Though he has stated that material objects were sent to the State Forensic Science Laboratory, Rasulgarh, Bhubaneswar, Odisha, Ext.11 shows that the chemical examination has been conducted by the Deputy Director and Chemical Examiner to the Government of Orissa, Regional Forensic Science Laboratory, Ainthapalli, Sambalpur. Admittedly, out of 18 material objects, the wearing apparels of the deceased namely Saya, Saree and Blouse which were stained with moderate and extensive human blood. The iron crowbar and Paniki were found to be stained with human blood, but no opinion has been rendered as far as its group is concerned. The blood group of the accused has also not been established in this case.Therefore,

when there is no other evidence forthcoming and the prosecution has relied only upon the disclosure statement of the appellant while in police custody and the recovery of weapon of offence on his statement, then it is the duty of the prosecution to establish the blood group of the deceased and further establish that that group of human blood was found on the weapon of offence. In this case, though the iron crowbar and the Paniki were stained with human blood, grouping has not been done. Similarly, blood grouping of the deceased has not been done. Though it can be argued and accepted at this stage that most probably blood group of the deceased was „A" group. At the same time, when no blood grouping is done so far as the appellant is concerned, so finding of few patches of blood of Group „A" (human origin) on his wearing Lungi will not establish the prosecution case beyond reasonable doubt.

15. Now, coming to the extra judicial confession of the appellant before P.Ws.1 and 2, both of them have stated that on their asking, the accused confessed that he has committed murder of the deceased as there was dispute between them. We have the opportunity to examine the law of appreciation of evidence with respect to extra judicial confession. In a recently decided case i.e. in the case of **Buta @ Bidyadhar Parida and another -Versus-**

State of Odisha (CRA No.50 of 2001, disposed of on 09.12.2020) we have observed as follows:

> "17. In this case, the prosecution heavily relies upon the extra judicial confession component of the evidence as led before the learned Sessions Judge. Section 24 of the Indian Evidence Act, 1872 is relevant for the purpose of appreciation of this case. It reads as follows:
>
> > "24.Confessions caused by inducement, threat or promise, when irrelevant in criminal proceeding.- A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority 15 and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings againsthim."
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> 18. Over the years through judicial pronouncements, Courts in India have laid down the guidelines for appreciation of retracted extra judicial confession, it can be summarized as follows:
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> > (I) The Hon"ble Supreme Court in the case of **Sahadevan & Anr Vs State of Tamilnadu**, as per the judgment delivered on 8th May, 2012 in Criminal Appeal No.1405 of 2008, after analyzing several judgments stated the principles regarding appreciation of extra-judicial confession in the followingmanner:-
> >
> > (I-a) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with great care and caution.
> >
> > (I-b) It should be made voluntarily and should be truthful.
> >
> > (I-c) It should inspire confidence.
> >
> > (I-d) An extra-judicial confession to be the basis of conviction, it should not

suffer 16 from any material discrepancies and inherent improbabilities.

(I-e) Such statement essentially has to be proved like any other fact and in accordance with law.

In case of **Ram Lal Vs. State of Himachal Pradesh**; the Hon'ble Supreme court as per the judgment delivered on 3rd October, 2018 in Criminal Appeal No.576 of 2010 observed that 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 @ Thimma Raju v. State of Mysore* (1970)2 SCC 105].

(II) In our opinion whether extra judicial confession is a weak piece of evidence or not, it depends upon the facts of that particular case and it should be examined by the Court with great care and caution. If from the very nature of the confession itself, to the person it was made, and under the circumstances it has been made, a slightest doubt arises to the mind of the Court, then it shall be proper on the part of the Court to proceed with the presumption that the extra judicial confession in that case is a weak piece of evidence by itself.

(III) The confession should be shown to have been made voluntarily and it should be truthful. It should inspire confidence; to examine whether it should inspire confidence or not, the Court should examine the following:-

(III-A) If the witness proving the confession generally reliable?

(III-B) If the relation of the witness with the accused is of such a nature that the later would confine in him?

(III-C) Is there any motive for the witness to implicate the accused persons ? (Witness might be trying to save itself or someone else by laying the blame on the accused).

(III-D) Is the witness interested in the outcome of the criminal trial being a relation of the deceased or having any interest in the affairs of the deceased ? and (III-E) If the confessional statement consistent with the other circumstances brought on record?

> If all the four questions are answered in favour of the prosecution, then it shall be safe appropriate and expedient to accept such retracted extra judicial confessions to record a conviction of the accused arraigned of committing the offence.
>
> (IV) The extra judicial confessions attains greater credibility if it is 18 supported by clear and cogent circumstances and further corroborated by other evidence.
>
> (V) The extra judicial confessions to form the basis of conviction should not suffer from any material discrepancy and inherent improbabilities.
>
> (VI) Such confession has to be proved like any other fact in accordance with the provisions of the Evidence Act."

16. Applying the above principles to the case in hand, it is seen that P.W.2 has stated that on 09.01.2006 at about 9.30 A.M. the appellant came to their house and told them that on the previous night the deceased had blood vomiting and died which reveals that the accused volunteered that the deceased died due to vomiting and later on at 12.00 Noon after arriving of her husband P.W.1, the appellant disclosed that he has committed murder of the deceased. P.W.1, however, stated that when he got the information from his friend, he went to the house of the appellant along with his wife, his mother and another villager and they found the deceased lying in the house of the accused with serious bleeding injuries and the accused on being asked told them that he had committed murder of the deceased. It is thus clear that there are

certain discrepancies regarding the very time and place where the extra judicial confession was made. The substance of the extra judicial confession have not been produced. Moreover, P.Ws.1 and 2 being related to the deceased are interested witnesses.

17. So, keeping in view this aspect of the case, we are of the opinion that it is not expedient or in the interest of justice to rely upon the retracted extra judicial confession. Hence, the learned Additional Sessions Judge, Rourkela has committed error by accepting the alleged extra judicial confession made by the appellant.

18. In the result, the appeal is allowed. The conviction of the appellant-Renta Nag alias Shyam Sundar Nag under Section 302 of the Penal Code and sentence to undergo imprisonment for life and to pay a fine of Rs.2,000/- only and in default to undergo imprisonment for a further period of two months recorded vide the impugned judgment and order dated 09.08.2007 by the learned Additional Sessions Judge, Rourkela in Sessions Trial No.78 of 2006 are hereby set aside. The appellant is acquitted of the charge under Section 302 of the Penal Code.

Since the appellant, namely, Renta Nag alias Shyam Sundar Nag is in custody, he be set at liberty forthwith, unless his detention is required in any other case.

The L.C.R. be returned back forthwith.

As restrictions are continuing due to COVID-19 pandemic, learned counsel for the parties may utilize the soft copy of this order available in the High Court"s official website or print out thereof at par with certified copies in the manner prescribed, vide Court"s Notice No.4587, dated25.03.2020.

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S. K. Mishra, J.

Savitri Ratho, J. *I agree.*

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Savitri Ratho, J.

Orissa High Court, Cuttack,
Dated the 8th January, 2021/B. Jhankar