

Chhittar

Vs

State of Rajasthan

Criminal Appeal No. 612 of 1986

(K. Jayachandra Reddy, G. N. Ray JJ)

08.09.1992

JUDGMENT

1. Heard learned counsel.

2. This is yet another case where the conviction of the sole appellant is based on the retracted extra judicial confession said to have been made by the appellant to PWs 7 and 11, nearly 20 days after the occurrence. The deceased was an old woman aged about 70 years at the time of the occurrence. On 11-4-75, she was alleged to have gone to a neighbouring village and since then she was missing. Her nephew lodged a report on 24-4-75 that she was missing. The SHO Chandmal got some information that the deceased had been murdered and a case was registered u/S. 302, IPC. The accused is alleged to have confessed before PWs 7 and 11 — a day prior to the registration of the case. The body was recovered after digging the earth. The post-mortem was conducted nearly 20 days after the occurrence. The doctor who conducted the post-mortem found that the dead body was in a highly decomposed state and he could notice only a fracture of the third Cervical Vertebra of the spine. He, however, found that the skull was intact. The doctor also opined that if anybody falls into Nallah from a 6 ft. — 7 ft., such a fracture could be possible, especially in the case of an old woman. This suggestion was made because the body was found near a Nallah. Certain recoveries were also effected and investigation was completed. The accused denied the offence. The Sessions Judge convicted the accused under Section 302, IPC and the appeal preferred by the accused was dismissed by the High Court.

3. The case of the prosecution rests on retracted extra judicial confession. It is well settled that the retracted extra judicial confession is a very weak type of evidence and strong corroborating circumstances should be there. Before we proceed further, it is necessary to examine whether the death was a homicidal one. Unfortunately, for the prosecution, the body was recovered 20 days later and it was in a highly decomposed state. The doctor (S.B. Raha) who conducted the post-mortem found only fracture of the third Cervical Vertebra of the spine and no other injuries. He noted that the same could not be ascertained whether it was the ante-mortem or post-mortem injury. No doubt, in his further deposition he has answered to a question that the injury was sufficient in the ordinary course of nature to cause death. The answer given does not in any manner improve the prosecution case, in view of the fact that the doctor could not categorically say whether the fracture was ante-mortem or post-mortem. That apart, according to PW 11, the accused is alleged to have confessed that he hit the deceased on the head and other parts of the body. But the doctor did not find, as noted above, any fracture of the skull or any other internal injuries. Therefore, the version as per the extra judicial confession is inconsistent with the medical evidence. The extra judicial confession should

be taken as a whole and should not suffer from any infirmity even if it is to be acted upon. But in this case we find that the belated confession itself becomes doubtful in the light of the medical evidence apart from being the same retracted. We think it is highly unsafe to sustain the conviction. In the result, the conviction and sentence awarded by the lower courts are set aside. The appellant should be set at liberty, if he is in jail. Appeal allowed.

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