

**Tuni Marandi Vs. State of Bihar**

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**Court :** Patna

**Decided On :** Jul-22-1999

**Judge :** P.K. Deb and D.P.S. Choudhary, JJ.

**Appeal No. :** Cr. Appl. (DB) No. 394 of 1990

**Appellant :** Tuni Marandi

**Respondent :** State of Bihar

**Disposition :** Appeal Dismissed

**Judgement :**

**P.K. Deb and D.P.S. Choudhary, JJ.**

1. This appeal has been preferred by the above-mentioned accused appellant against the judgment and order dated 27-8-1990 passed by the then 4th Additional Sessions Judge, Munger in Sessions Case No. 325 of 1987 convicting the accused-appellant under Section 302 of the Indian Penal Code and sentencing him rigorous imprisonment for life. When the appeal was preferred before this Court vide order dated 15-11-1990 a Division Bench of this Court has appointed Shri Viveka Nand Jha as an arguing Counsel for and on behalf of the accused-appellant.

2. The deceased in the present case is Matal Marandi who happened to be the cousin of the accused-appellant Tuni Marandi. The prosecution case is that the accused-appellant Tuni Marandi was a habitual drunkard and on being cousin, the deceased Matal Marandi used to caution him not to take more wine and while chastising he was reminding of the death of the elder brother of the accused-appellant on the same cause of consumption of excess liquor. On the previous date of occurrence when again the deceased cautioned the accused-appellant while he was taking wine in a nearby house belonging to one blind woman then the accused appellant became enraged and threatened the deceased of dire consequences. The accused and the deceased were closed neighbours. In the morning of 28-4-1987 at about 5 a.m. the Matal Marandi was found lying unconscious having several injuries on his person on the back side of house. It was detected by his son Fudo Marandi (P.W. 5). He found injuries on his temporal region and below his left eye and that the injured was not in a position to speak. The informant then called the neighbouring persons and as there was previous incident of chastising it was informed that the accused have hands in injuring Matal Marandi. The witnesses then called the village Chowkidar (P.W. 4) Latru Roy who came to the spot and found the injured lying unconscious condition and then went to the house of the accused where the accused was found to be hiding himself on the corner of the room. He was brought out by the village Chowkidar and on being asked as to how Matal Marandi had been injured then it is alleged that the accused-appellant confessed his guilt before the villagers and the chowkidar and give the whole story starting from the previous date's chastising and wielding such threatening by him and then causing injury on the person of Matal Marandi by Tangi. The village Chowkidar (P.W. 4) along with the villagers caught hold of the accused-appellant and then went to the police station at Jhajha together with the injured and there & fordbeyan was made by the son of the deceased P.W. 5 Fudo Marandi wherein details of the occurrence was mentioned and on the basis of that fardbeyan a police case was registered. The accused was arrested and the injured was sent to hospital but on that date itself in course of treatment the injured died. He did not regain his consciousness till his death. Before Police also the accused made confession regarding his guilt and he has specifically stated that he had committed the offence by means of Tangi having a

wooden handle fixed on it and that the same Tangi had been concealed in the corner room of his house. On such statement, the Police went to the house of the accused-appellant and as stated by the accused-appellant the weapon was recovered from the place where mention was made by the accused-appellant. On the dead body of the deceased, post-mortem was held and after completion of investigation charge-sheet has been submitted under Section 302, I.P.C. against the accused-appellant.

3. On being committed to the Court of Session, charge was framed under Section 302, I.P.C. against the accused-appellant and when the same was read over and explained to him he pleaded not guilty. At that stage, the defence of the accused was of denial of his involvement with the crime.

4. For and on behalf of the prosecution as many as seven witnesses have been examined. P.W. 1 Dr. Satya Narain Singh was the doctor attached to Janjha Hospital who held post-mortem examination over the dead-body of Matal Marandi. During the course of post-mortem, he found a bandaged wound on the scalp and on opening the bandage he found stitched wound on the scalp in front of the right ear. On dissection a cut mark was found ranging from the lower part of the right temporal and frontal bones up to lower part of the right parietal bone, There was laceration of brain membrane and the brain substance just near the right ear, the injury was anti-mortem one and caused by a sharp-cutting weapon like Tangi. P.W. 2 Barku Chonrain and P.W, 3 Budhan vlarandi are the villagers who went to the house of the accused and in their presence accused-appellant made extra-judicial confession given description about the whole occurrence. Both these witnesses have corroborated each other on the vital point regarding extra-judicial confession and they have also mentioned as to what was the actual confession being made by the accused-appellant. P.W. 4 Latru Rai is the village Chowkidar. He has also supported the prosecution story regarding the extra-judicial confession made by the accused appellant in presence of all. He along with the villagers and the informant took the accused appellant to the Police station. P.W. 5 Phudu Marandi is the informant and the son of the deceased, P.W. 6 is Chandra Bhushan Sahay who was the medical Officer of the Referral Hospital & he examined the deceased at the injured stage first and he found two injuries on the

person of the injured Matal Marandi. The injuries were of the following nature : (i) Wound on right maxillary region 1'x 1/2' x 1/2'. (ii) Wound on right preauricular region 1/2' x 1/2' x 1/2'. Another injury was also there on the right post auricular region 1/2' x 1/2' x 1/2'. There was also swelling on the right side of the face. Injuries were caused by sharp-cutting weapon like Tangi as deposed by the doctor and the swelling was caused due to inflammation caused by injuries. Although there were three injuries mentioned on the person of the injured but afterwards those were stitched and the injured was sent to Jajha Hospital for treatment where the injured died, but the doctor who held post-mortem had mentioned about the single injury. This has been caused due to stitching of the three injuries arrayed in the same line and, as such, it cannot be said that the injury found at the Referral Hospital is different from that which had been found after post-mortem examination. P.W. 7 Md. Shamse Alam is the Investigating Officer of the case. During the course of examination under Section 313, Cr. P.C. the accused-appellant has denied of his involvement with the crime and he specifically also denied of making any confession either before the villagers or before the Police. After consideration of the evidence on record, the learned Sessions Judge came to the finding that although the case is based on circumstantial evidence but all the chain of circumstances could be proved beyond all reasonable doubts and those chain of circumstances when proved pointed towards the guilt of the accused-appellant alone. The prosecution case is based on three types of evidence, namely, (i) the extra-judicial confession made by the accused-appellant before the villagers including P.Ws. 2, 3, 4 and 5. (ii) the part of the confession made before the Police by the accused-appellant towards recovery of the incriminating weapon as admissible under Section 27 of the Evidence Act. (iii) Previous incident between the accused and the deceased regarding consumption of liquor by the accused-appellant and chastising by the deceased.

5. Although on the first type of evidence, there was retraction at a belated stage by the accused-appellant only in course of his statement under Section 313, Cr. P.C. but there is overwhelming evidence by the above-mentioned all the four witnesses regarding the same extra-judicial confession. In that extra-judicial confession, the accused-appellant had not only described about the incident of assault made by him but also the previous incident which led him to commit the offence. All the

witnesses of the prosecution as mentioned above had deposed in unequivocal terms, on the factum of extra-judicial confession and although the verbatim of such extra-judicial confession has not been reproduced in the evidence by the witnesses but the contents of the said confession had been corroborated by all the witnesses and although they have been cross-examined at length. On these points none of the witnesses could be dislodged. Moreover that extra-judicial confession also gets support from the further evidence of P.W. 5 Phudo Marandi towards the factum of previous incident between the accused and the deceased. He heard the deceased chastising the accused for non-consumption of more liquor and to give up the habit and on this accused-appellant became enraged and threatened him of dire consequences. Such incident occurred on the previous night of occurrence at the house of a blind woman where the accused-appellant was consuming liquor. At the very spot P.W. 5 Phudo Marandi was not physically present but he was outside and he heard the whole incident. So there is corroboration of the part of the extra-judicial confession by further evidence from the side of P.W. 5. Again soon after arrest, the accused-appellant made confession before the Police and there also he gave the same contents which he made before the villagers in the extra-judicial confession. That part of the confession before the Police is not admissible in evidence, but the fact remains that the accused-appellant had made confession, before the police also and in furtherance of that confession before the Police he had also taken the burden regarding recovery of the incriminating weapon from the hiding place. Thus, we also find that the learned Court below has rightly held that this part of the circumstance regarding extra-judicial confession made by the accused-appellant would be proved by the prosecution beyond all reasonable doubts. Regarding the second part of circumstance as regards recovery of incriminating weapon as per statement made by the accused-appellant before the Police as admissible under Section 27 of the Arms Act, it appears that soon after arrest the accused-appellant made such confession and on the basis of that confession the incriminating weapon has been recovered from inside the house of the accused-appellant. It has been argued for and on behalf of the learned Counsel appearing for the accused appellant to the effect that the said Tangi which had been recovered and seized is a doubtful one to be the incriminating weapon as the said weapon did not have any marks of blood.

Whether there was any marks of blood or not on the weapon itself has not been clarified either by the prosecution or by the defence during the course of trial but the fact remains it had never been sent to the Forensic Science Laboratory for its chemical examination but if the weapon is not the incriminating weapon then the accused-appellant might not have made such statement before the police. Again from the medical evidence of two doctors, it could be found that the injuries found on the person of the injured/deceased whereby all incised wounds were caused by sharp-cutting weapon like that of Tangi, so there is corroboration from the medical evidence regarding the use of the weapon at the time of offence. So, we find that this circumstance has also been proved against the accused-appellant beyond all reasonable doubt. The third circumstance regarding the previous incident towards motive/ mens rea of the offence we have already discussed the same in the foregoing paragraphs. That factum of previous incident of chastising by the deceased to the accused or cautioning him finds place right from the fardbeyan up to the last stage of the trial and the same has been corroborated without any deviation at any stage. Thus, that circumstance has also been proved against the accused-appellant beyond all reasonable doubt. An argument has been put forward by the learned Counsel for the appellant that no marks of blood could be found inside the house of the accused-appellant while he was captured by the villagers being led by the Chowkidar. That submission is not at all convincing. The occurrence took place on the back side of the house of the deceased and there at the place of occurrence marks of blood together with marks of violence could be detected by the Investigating Officer and it was admitted during his confession before the villagers that the occurrence took place on the back side of the house of the deceased. Thus, on independent scrutiny of the evidence on record, we come to the finding that, although there is no direct evidence in the case but the circumstances proved in the case are so strong that the same can infer only the guilt of the accused and none else.

6. In the result, the appeal is dismissed. The impugned judgment of conviction and order of sentence is hereby upheld and confirmed.