

**Dullav Khora Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/527968](http://sooperkanoon.com/527968)

**Court :** Orissa

**Decided On :** Jan-04-2008

**Reported in :** 2008(I)OLR594

**Judge :** L. Mohapatra and; B.P. Ray, JJ.

**Appellant :** Dullav Khora

**Respondent :** The State

**Disposition :** Appeal allowed

**Judgement :**

**L. Mohapatra, J.**

1. The appellant, having been convicted for commission of offence under Sections 302 of the Indian Penal Code and sentenced to imprisonment for life, has preferred this appeal challenging the order of conviction and sentence passed by the learned Additional Sessions Judge, Jeypore, Camp-Malkangiri in S.C. No. 23/95.

2. Case of the prosecution is that on 23.1.1995 at about 5 P.M. while the deceased along with P.W.1 were going from their village Manusha to village Bhimarangini to the house of P.W.2 to observe 'PAUSA PARBA', there was a quarrel between the deceased and two accused persons charge-sheeted including

the appellant. It is further Case of the prosecution that the appellant Dullav along other accused picked up quarrel with the deceased and dragged him. P.W.1 out of fear ran to the house of P.W.2 and informed about the incident. Immediately thereafter P.W.2 along with some villagers came in search of the deceased but could not trace him. On the next date, i.e. 24.1.1995 P.W.2 lodged a written report (Ext. 6) before the O.I.C. of Malkangiri Police Station and a station diary entry was made. He searched for the deceased and ultimately on 27.1.1995 at about 8 A.M. P.W.1 and others found dead body of the deceased was lying near Bariha Dangar and by that time his left hand was completely removed and his both testicles were removed and there were marks of several injuries on his head and chest and there was also no hair in his head. It is also the Case of the prosecution that the appellant made an extra-judicial confession before the P.W.3 and after such extra judicial confession, a formal F.I.R. (Ext. 5) was lodged before the O.I.C, Malkangiri Police Station. The case was registered against the appellant and one Dhanu Khora for commission of offence under Section 302/34 of the I.P.C and charge-sheet was also submitted for the aforesaid two offences. Both the accused persons faced trial, but the appellant was convicted for commission of offence under Section 302 I.P.C. and the other accused namely Dhanu Khora was acquitted of the charges.

3. In order to bring home the charges, the prosecution examined 8 witnesses, but none was examined on behalf of the defence. Plea of the defence is completely denial of the prosecution case. The Trial Court on the basis of the extra-judicial confession, evidence of P.W.1 and evidence leading to discovery of weapon of offence, found the appellant guilty of the charge and convicted him thereunder.

4. Mrs. Panda, learned Counsel appearing for the appellant challenges the legality of the findings arrived at by the trial Court on the ground that the extra-judicial confession on which much reliance has been placed by the trial Court cannot form basis of conviction unless the prosecution is in a position to prove the basis for which the appellant made such a confession before P.W.3. It is further contended by the learned Counsel appearing for the appellant that the evidence of P.W.1 is of no help to the prosecution since she has specifically admitted in cross-examination that she had not seen any assault on the deceased at the hands of the appellant.

The only material available against the appellant being leading to discovery of weapon of offence, in absence of any corroborative evidence, judgment of the trial Court is unsustainable. Learned Counsel for the State referring to the deposition of witnesses examined in course of trial submitted that the circumstance proved by the prosecution complete the chain and there is no room to entertain any doubt so far as guilt of the appellant is concerned.

5. P.W.1 is the daughter of the deceased. She has stated in her deposition that on a Monday she was going to village Bhimarangini along with the deceased to observe 'PAUSA PARBA' and on the way both the accused caught hold of the deceased and assaulted. Out of fear she ran away to village Bhimarangini and informed P.W.2. However, this witness was declared hostile and in course of cross-examination by defence admitted that she has not seen the accused persons assaulting her father and she has further admitted that there was no previous enmity between her father and the accused persons. P.W.2 is the nephew of the deceased who was informed by P.W.1 regarding assault by the appellant. His evidence is not of much importance since after receiving the information he proceeded to the spot and did not find any one. P.W.3 is the witness on which much reliance has been placed by the trial Court so far as extra-judicial confession is concerned. This witness in his deposition has stated that he had earlier mortgaged some land with the appellant and on 24.1.1995 the appellant confessed before him that he had killed the deceased by means of axe and stone. There is nothing in his deposition to show under what circumstance such extra-judicial confession has been made by the appellant. In this connection, reference may be made to a decision of this Court in the case of Ghasla Harijan v. State of Orissa reported in (2002) 23 OCR 10. This Court in the aforesaid decision held that extra-judicial confession by itself is not a clinching evidence but it can only be utilized as a corroborative piece of evidence. Evidence of extra-judicial confession can neither be accepted nor can be utilized against the accused without ascertaining its veracity. In absence of any cogent, clear and unimpeachable evidence, conviction should not be made only with the aid of extra-judicial confession specifically when the prosecution fails to prove the basis for which the accused made such extra-judicial confession. A bare perusal of the evidence of P.W.3 clearly indicates that he has not stated anything about the basis

in which such extra-judicial confession has been made before him. There is nothing in his evidence to show that there was a reason for the appellant to repose confidence on P.W.3 for the purpose of making such extra-judicial confession. P.Ws. 4 and 5 are the witnesses to recovery of the weapon of offence. P.W.8 is the doctor who conducted post-mortem examination and found as many as 15 injuries on the body of the deceased. Admittedly, the dead body was found almost four days after the alleged occurrence with vitals parts missing from the dead body. The inquest report (Ext. 4) shows that the following parts of the body were missing, (i) Left hand from the shoulder joint; (ii) Testicles, (iii) Lower abdomen and (iv) Left eye. P.W.8 in his deposition has stated to have found 15 injuries and he also stated that the injuries were ante mortem in nature. Therefore, this Court entertains a doubt about the correctness of the post-mortem report.

6. In view of such nature of evidence, it is clear that the extra-judicial confession made before the P.W.3 is not acceptable for the reasons stated earlier and the medical evidence is also doubtful. The circumstance available against the appellant is leading to discovery of weapon of offence and that cannot be the sole factor to maintain the order of conviction in absence of any other corroborative material.

7. We have, therefore, no hesitation to allow the appeal and set aside the impugned judgment. The appellant if in custody be set at liberty forthwith, if his detention is not required in any other Case.