

**Panu Vs. State**

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**Court :** Orissa

**Decided On :** Sep-23-1977

**Reported in :** 44(1977)CLT643; 1978CriLJ690

**Judge :** S.K. Ray and; P.K. Mohanti, JJ.

**Appellant :** Panu

**Respondent :** State

**Judgement :**

**P.K. Mohanti, J.**

1. The appellant has been convicted Under Section 302, Indian Penal Code and sentenced to undergo imprisonment for life for having committed the murder of his paternal grandfather Markanda Gochhayat.

2. Tersely put and shorn of unnecessary details the prosecution case as disclosed at the trial is as follows:

The deceased Markanda Gochhayat was an old man of 70 years. He had five sons, viz. Jhunturu, Nadia, Makuru (P. W. 3), Bira and Purandar. The appellant is the son of Purandar. 10 to 12 years ago Nadia, Makuru, Bira and Purandar lived separate from the deceased, but Jhunturu continued to live with him jointly. The deceased had some lands, cattle and utensils. He did not give a share of the

property to his separated sons. Purandar, the father of the appellant was demanding a share out of the property. He had convened a Panchayat for division of the property. On 18-8-73 the deceased lodged information at the police station that the appellant and his father forcibly ploughed a piece of land in his possession. Upon this information a station diary entry was made vide Ext. 9. During police enquiry the appellant's father gave an undertaking (Ext. 9/1) not to interfere with the possession of the land of the deceased. Two days prior to the occurrence the appellant and his sister's husband Narottam Naik (P. W. 5) forcibly cut and removed the paddy crop raised by the deceased on his land. A Panchayat meeting was held and the appellant promised to return the paddy which he had removed.

3. In this background it was alleged that on the night of 23-12-73 when the deceased was sleeping at his cowherd shed situated at a lonely place about one mile away from his village the appellant went there with an axe and dealt blows on his head as a result of which he died. The occurrence came to light on the next morning when the grand-daughters of the deceased went to serve breakfast to the deceased and found that he was lying dead with bleeding injuries.

4. F.I.R. was lodged by P. W. 3 Makuru Gochhayat, the son of the deceased at Thakurgarh Police Station on 24-12-73 at 3.30 P.M. The Investigating Police Officer (P. W. 10) visited the spot at 4.30 P.M. and arrested the appellant who had already been taken into custody by a constable. He held inquest over the dead body and despatched it for post-mortem examination. While under arrest the appellant gave recovery of the axe (M.O. I) from his court-yard. After due investigation the appellant was charge-sheeted Under Section 302, I.P.C.

5. The appellant denied the charge and pleaded innocence.

6. There is no direct evidence of any eye-witness about the factum of murder. P.W. 5 Narottam Naik had made statements Under Section 164 Cr.P.C. to the effect that he had seen the entire occurrence, but he went back upon those statements. At the trial, he said that he did not know anything about the occurrence and was cross-examined by the Public Prosecutor. P.W. 4 Pflna Dei who is the mother of the appellant had also made statements Under Section 164

Cr.P.C. that after committing the murder the appellant had made an extra-judicial confession before her. She also turned hostile to the prosecution and was cross-examined by the Public Prosecutor. The order of conviction is based mainly on the retracted extra-judicial confession of the appellant made before P.Ws. 1 and 3 on 24-12-73 and some circumstantial evidence. Mr. M. L. Jain, the learned Counsel appearing as amicus curiae before us contended that the evidence regarding extra-judicial confession alleged to have been made by the appellant is wholly unreliable and further that there is absolutely no cor-roboration of the extra-judicial confession. He argued that an extra-judicial confession is a weak type of evidence and the court should be very cautious in accepting the same and in any case it should not be made the basis of conviction unless it is corroborated by reliable evidence.

7. That the deceased died as a result of the injuries sustained by him on the date and at the place as alleged by the prosecution is a matter beyond dispute. It is proved by the materials on record that the death was homicidal. The fact that the injuries on the head of the deceased were caused by an axe is fully supported by the doctor who held postmortem examination over the dead body of the deceased on 25-12-73. In the doctor's opinion, the injuries were sufficient in the ordinary course of nature to cause death. The main question for consideration is who was the perpetrator of this crime.

8. The fact that a confession is extra-judicial and not judicial does not really make any difference. The only material difference between a judicial and an extra-judicial confession is that whereas the former is recorded by a Magistrate with all the formalities provided by Section 164, Cr.PC in order to facilitate ascertainment of the confession having been given voluntarily, the aid of these formalities and the evidence of the Magistrate are not available in the case of an extra-judicial confession. All the same, if it could otherwise be ascertained that the extra-judicial confession has been made voluntarily and it was true, its probative value would be the same as that of a confession duly recorded Under Section 164, Criminal Procedure Code. When an extra-judicial confession is found to be both true and voluntary there would, strictly speaking, be no bar to the conviction on the basis of that confession alone even though it was retracted by the accused subsequently.

9. In the case of *Wakil Nayak v. State of Bihar*, 1972 Cri App R. (SC) 1 : 1972 Cri LJ 566 the Supreme Court observed that before the court acts on extra-judicial confession, the circumstances under which the confession was made, the manner in which it was made, the persons to whom it was made must be considered along with the two rules of caution. first, whether the evidence of confession is reliable and secondly whether it finds corroboration. We are also aware of the subsequent pronouncement of their Lordships of the Supreme Court in *Maghar Singh v. State of Punjab* AIR 1975 SC 1320 : 1975 Cri LJ 1102 wherein it was observed that the evidence furnished by the . extra-judicial confession made by the accused to witnesses cannot be termed to be a tainted evidence and if corroboration is required, it is only by way of abundant caution. If the Court believes the witnesses before whom the confession is made and it is satisfied that the confession was voluntary, then in such a case conviction can be founded on such evidence alone. The observations made in *Maghar Singh's* case, in our opinion, do not in any way, detract from the principle laid down by their Lordships in the earlier case. Thus, the two rules of caution in the matter of acting upon extra-judicial confession laid down by their Lordships are: (1) that the evidence of confession must be reliable and free of infirmity and (2) it must find corroboration.

10. Now, in the present case the prosecution sought to prove that the appellant made extra-judicial confession before P.Ws. 1 and 3. There is nothing on the record to show that the confession was extracted by the witnesses from the appellant by any threat, inducement at promise and that it was not voluntary, On the other hand, we have the forthright statements of P.Ws. 1 and 3 that the appellant admitted before them that he had committed the murder of the deceased by dealing blows with an axe. P.W. 1 Ramesh Chandra Bhoi stated as follows:

In presence of all, I enquired from the accused if he had murdered the deceased Markanda. I also informed him that he was strongly suspected of having committed the murder. On my query at the beginning, the accused kept silent. Then I asked him to tell the truth. Thereupon, the accused confessed before us that he killed Markanda with the blunt side of an axe in the night. Thereafter, the accused went away to his house.

P.W. 3 Makuru Gochhayat similarly stated:

P.W. 1 Ramesh enquired from the accused if he had murdered Markanda. On being asked the accused remained silent for one minute and then confessed that he had killed Markanda with the blunt end of the blade of the axe.

P.W. 1 is a co-villager of the appellant and an independent witness. P.W. 3 is a paternal uncle of the appellant. There is nothing to show that they were inspired by any hostile animus against the appellant. Their evidence is sufficiently impressive and fully justifies and supports the conviction. During his examination Under Section 313 Cr.PC the appellant denied having made any confession before the witnesses. But in his petition of appeal presented through the Superintendent of Jail he has stated that he made the confession to avoid unnecessary hardship. Nothing has been shown as to for what earthly reason P.W. 3 who is a paternal uncle of the appellant would falsely implicate him in a charge of murder. The reason for making such a confession is obvious. The appellant probably thought that P.W. 3 being a close relation of his would hush up the matter. The fact that the appellant made the extra-judicial confession has been mentioned in the F.I.R. which was lodged on the day following the occurrence. We are satisfied that the two witnesses, P.Ws. (1 and 3, truly deposed about the voluntary confession made by the appellant before them to the effect that he had committed the murder of the deceased and that he had used an axe for that purpose.

11. The extra-judicial confession, in our opinion, is amply corroborated by the circumstantial evidence on the record. We have given a detailed narration of the dispute between the appellant and his Bather on the one hand and the deceased on the other regarding division of the property. The evidence of P.W. 3 to the effect that in the month of Bbadrab preceding the occurrence the appellant and his father had forcibly cultivated the land of the deceased is amply corroborated by the station diary entry dated 18-8-73 (Ext. 9). His further evidence that two days prior to the occurrence the appellant and P.W. 5 had forcibly cut and removed the paddy crop raised by the deceased on his land and that in a Panchayat meeting convened by the deceased the appellant promised to return the paddy goes practically unchallenged. We are inclined to hold that the appellant felt very much

aggrieved by the action of the deceased in convening a Panchayat meeting and getting an undertaking from him for return of the paddy. This probably provided the motive for the murder.

12. The second circumstance relied upon by the prosecution is the recovery of the axe-M.O.I. It is in evidence that the appellant was serving under P.W. 2 as a farm servant by the time of the occurrence. It is in the evidence of P.W. 2 that the axe (M.O. I) belongs to him and that on the date of occurrence the appellant had taken it with him to his house. P.W. 10 the Investigating Police Officer testified that while under arrest the appellant made a statement that he had thrown the axe in his court-yard and as a result of this statement the axe (M.O. I) was recovered from the courtyard of the appellant, P.W. 7 proved seizure of M.O. I. The evidence of P.Ws. 7 and 10 clearly establishes the fact of recovery of M.O. I at the instance of the appellant. It is no doubt true that no bloodstains were found on it, but that is quite understandable as there was sufficient time for the appellant to remove the bloodstains in such manner as never to be traced. Therefore the absence of bloodstains on the weapon is of no significance in the particular facts and circumstances of the case.

13. The third circumstance pressed into service by the learned trial Judge is the conduct of the appellant subsequent to the incident. It is in the evidence of P.W. 3 that in the morning following the occurrence when there was a hue and cry about the murder he and his brother Jhunturu ran towards the spot and they saw the appellant going on his work. The appellant did not go to the spot to see the dead body. This conduct of the appellant speaks volumes of his guilty conscience. Had the appellant been innocent, he would not have hesitated to go to the spot to see the dead body of his grandfather.

14. Having carefully examined the evidence on record we are clearly of the opinion that the prosecution has succeeded in bringing home the guilt to the appellant beyond reasonable doubt. The conviction and sentence are unassailable.

15. The result, therefore, is that the appeal fails and is dismissed.

**S.K. Ray, J.**

16. I agree.

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