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Court : Rajasthan

Decided On : Feb-09-2009

Reported in : 2009CriLJ2467; RLW2010(1)Raj309

Judge : Narendra Kumar Jain and; Guman Singh, JJ.

Appellant : Ashok

Respondent : State of Rajasthan

Judgement :

Narendra Kumar Jain, J.

1. These two appeals are directed against the common judgment and order dated 18th December, 2002 passed by the Additional District and Sessions Judge (Fast Track) Beawar, in Sessions Case No. 4/2002 (26 of 1995), therefore, both the appeals are being disposed of by this common order.

2. Briefly stated the facts of the case are that on 10th February, 1995 P.W. 3 Karim Bux s/o Dhanna Singh lodged a written report (Exhibit P-3) at Police Station Sadar, Beawar, stating therein that on 9th February, 1995 at about 8.00 p.m. when he was returning to his home after natural call, he saw his nephew Shokin s/o Rasool, Shall S/o Gheesa and Ashok s/o Chhotu, going towards their agriculture field situated near 'talab-wala-kua'. He asked them about their visit; thereupon Shaft replied that they are going to oust 'Rojda', (a kind of animal), from their

agriculture field; on hearing this, he went to his house and slept. On the next day morning his brother Rasool came to him and told that Shokin had gone with Shafi and Ashok in the last night but has not come back at home. He and his brother called Ashok and asked him about Shokin. Ashok told them that Shafi knows about him. Thereafter they called Shaft and asked him about Shokin but he told that Ashok knows about Shokin. When they could not get anything about Shokin from their mouth, they told about it to Hussein, who went at the residence of Shafi and, on coming back, Hussein narrated us the entire story told by Shaft that Shokin has been killed and his dead body has been put in the well known as 'meeramma-ka-kua'. He told that they committed a mistake and he should save them and that report may not be lodged. Thereafter they called Shaft and Ashok as to what happened with Shokin but they were not found at their houses. Thereafter he along with his brother Rasool, Bhima s/o Lalu and Karima s/o Lala went at the well, which is known as 'meerama-ka-kua' along with 'bilai', a hook used for taking out an object fallen to the bottom of a well; they tried to search the dead-body by putting the 'bilai' in the well and, during this exercise, the dead-body started floating on the water in the well. His nephew Shokin has been killed by Ashok and Shaft and his dead-body is floating on the water in the well and, prayed for necessary action in this regard after lodging the report.

3. On the basis of this written report, the police registered FIR No. 36/1995 under Sections 302/201/34, IPC and started investigation. The dead-body was recovered. The accused-persons were arrested and on their information given under Section 27 of the Evidence Act during custody, slippers and one Alvin watch of the deceased and rope used by the accused to commit murder of the deceased, were recovered. The postmortem of the dead body was conducted.

4. After completion of investigation, the police submitted a challan against both the accused-persons for the offence under Sections 302, 201 and 34, IPC. The accused-persons were committed for trial to the Court of Sessions, who transferred the case for trial to the Court of Additional Sessions Judge. The trial Court framed charge against the accused-persons for the offence under Section 302 read with Section 34 and 201, IPC. The accused-persons denied the charge and claimed to be tried.

5. In support of the case, the prosecution examined total 13 witnesses, namely, P.W. 1 Rasool, P.W. 2 Rama, P.W. 3 Karim Bux, P.W. 5 Gajendra Gaur, P.W. 6 Karima, P.W. 7 Ali Mohammad, P.W. 8 Hussein, P.W. 9 Reshmi, P.W. 10 Rajendra Singh, P.W. 11 Dr. M. L. Thathera, P.W. 12 Prahlad Rai, P.W. 13 Ratan Singh and P.W. 14 Mitthu, and produced documentary evidence Exhibit P-1 to Exhibit P-28. Thereafter statements of accused-persons were recorded under Section 313, Cr. P.C. In answer to question No. 15, the accused-persons stated that due to animosity, the prosecution witnesses have deposed against them. The accused-persons sought time to lead evidence in defence but despite granting them an opportunity, they did not lead any evidence in defence.

6. The learned trial Court, after hearing the arguments of the parties and considering the record, convicted and sentenced both the accused-appellants Shafi Mohammad and Ashok under Section 302 read with Section 34, IPC to suffer imprisonment for life and a fine of Rs. 1000/- (Rupees one thousand) each; in default of payment of fine, each accused to further undergo one year's additional simple imprisonment. Both the accused-persons were also convicted and sentenced under Section 201, IPC to undergo 2 years R.I. and a fine of Rs. 100/-; in default of payment of fine, to further undergo one month's additional simple imprisonment. Both the sentences were ordered to run concurrently.

7. The learned Counsel for the accused Shaft Mohammed contended that the accused has not committed any offence and the trial Court has committed an illegality in convicting and sentencing him. He contended that the trial Court has convicted the accused persons on the basis of last seen evidence, extra judicial confession made by accused Shaft Mohammed in presence of P.W. 8 Hussein and recovery of articles i.e. slippers, rope and Alvin Watch. He contended that so far as the last seen evidence is concerned, there are serious and material contradictions in the statements of P.W. 1 Rasool, P.W. 9 Reshma and P.W. 3 Karim Bux also. P.W. 1 Rasool has stated that he was at his home when Shaft and Ashok came to call Shokin, whereas P.W. 9 Reshma, who is wife of P.W. 1 Rasool, stated that her husband was not at her home when accused-persons came there. P.W. 3 Karim Bux stated that deceased and accused-persons went to oust 'rojda' (a wild-animal) from their agriculture field; his statement is not

corroborated with the statement of P.W. 13 Ratan Singh, the Investigating Officer, who stated that there was no 'rojda' at the relevant time as there was no crop at that time. There is contradiction in the statement of the witnesses with regard to the colour of muffler belonging to the deceased; P.W. 3 Karim Bux stated that it was of black colour whereas another witness stated it to be of red colour. P.W. 1 has not stated anything about muffler of the deceased. The learned Counsel, therefore, contended that there is no cogent and reliable evidence with regard to last seen evidence and, in these circumstances, the said evidence is liable to be discarded. He further contended that so far as extra judicial confession by accused-appellant Shaft in presence of P.W. 8 Hussein is concerned, the same cannot be relied upon in the facts and circumstances of the present case and for the reason that P.W. 8 Hussein was interested witness being relative of the deceased; it is also not clear as to what status or authority P.W. 8 was holding to save accused or to influence police so that accused Shaft could have deposed before him about commission of crime by him and to come in his rescue. In support of his submission, he referred Makhan Singh v. State of Punjab 1998 (Supp) SCC 526 and Kavita v. State of Tamil Nadu : 1998 CriLJ3624 . He also pointed out contradictions in the statements of P.W. 6 Karima and P.W. 14 Mitthu to disbelieve the recovery of slippers and rope on the information and at the instance of accused Shaft. He contended that in absence of any reliable evidence the accused-persons cannot be convicted. In support of his submissions, he referred Krishnan v. State represented by Inspector of Police : 2008 CriLJ3590 . He further argued that from the entire facts and circumstances of the case, the motive of the appellants to commit crime is not established and in the present case, being a case based on circumstantial evidence, the motive is not proved and in absence of it the chain is not complete and thus the accused-persons are entitled to get the benefit of doubt. In support of his submission, he referred State (Delhi Administration) v. Gulzarilal Tandon : 1979 CriLJ1057 . The learned Counsel further argued that the prosecution is required to prove its own case and cannot get the benefit of lapse on the part of the defence. In support of his submission he referred Sharad Birdhichand Sarda v. State of Maharashtra : 1984 CriLJ1738 .

8. Shri Biri Singh Sinsinwar, the learned Counsel for the accused-appellant Ashok, argued that the cause of death in the postmortem-report (Exhibit P-7) has been shown to be from strangulation and drowning. He also referred the statement of P.W. 11 Dr. M.L. Thathera. He contended that there was no fracture in the neck and further there was no internal injury around the neck of the deceased, therefore, it cannot be said that it was a death by strangulation. So far as death of deceased by drowning is concerned, he contended that no water was found in the body of the deceased, therefore, the same is also not believable. He therefore, contended that there is a doubt about the cause of death of the deceased and the benefit of doubt should be given to the accused. He further contended that so far as recovery of watch from accused-appellant Ashok is concerned, it is not clear from the information given by him under Section 27 of the Evidence Act vide Exhibit P-25 and recovery memo Exhibit P-9 as also the site-plan Exhibit P-10 as to whether the said watch belonged to the deceased or not. The fact that the watch belonged to the deceased, has not been mentioned in the said exhibits, therefore, the said recovery has no evidentiary value against the accused.

9. So far as evidence relating to extra judicial confession by accused before P.W. 8 Hussein is concerned the learned Counsel contended that the said evidence is a weak type of evidence and cannot be made sole basis for convicting the accused. The so-called confession, made by co-accused Shaft before P.W. 8 Hussein and it being a confession of co-accused, cannot be used against accused Ashok. He also contended that so far as last seen evidence is concerned, the same cannot be made the sole basis for convicting the accused.

10. Shri Sinsinwar, in alternative, contended that the appellant Ashok was Juvenile on the date of occurrence and no enquiry was made by the trial Court in this regard. However, on the direction of this Court dated 17-1-2008 given in the present appeal, the trial Court made an enquiry and, in its report dated 25-2-2008, recorded a finding that the appellant was found to be juvenile on the date of occurrence. The learned Counsel for the appellant Ashok, in these circumstances, contended that even if the conviction of the appellant Ashok is upheld then his sentence of imprisonment has to be set-aside and in support of his submission he referred Pradeep Kumar v. State of U.P. : 1994 CriLJ148 and Babban Rai v. State

of Bihar : 2008 CriLJ1038 .

11. The learned Public Prosecutors appearing on behalf of the State supported the impugned judgment and order passed by the trial Court and contended that there is cogent and reliable evidence in the present case to connect the accused-appellant with the crime. The trial Court has considered the prosecution evidence in detail and recorded a finding and accused Shafi gave his statement before P.W. 8 Hussein that they killed the deceased Shokin and put his deadbody in the well known as 'meeramma-ka-kua', and, on the basis of this statement, the dead-body of the deceased was recovered from the well known as 'meeramma-ka-kua'. Thereafter the accused-persons were arrested and they gave information voluntarily about slippers and watch of the deceased and the rope which was used by them to strangulate the deceased, and on their information the recovery of the articles i.e. slippers, watch and rope, was made, and the same has been proved by 'motbirs' P.W. 6 Karima and P.W. 14 Mitthu and also by P.W. 13 Ratan Singh, the Investigating Officer. He also stated that there is a reliable evidence about last seen of the accused-appellants and the deceased i.e. the statement of P.W. 3 Karim, and his statement has further been corroborated by the statements of P.W. 1 Rasool and P.W. 9 Reshma, therefore, the trial Court rightly found both the accused-appellants guilty of the offence and therefore, in his submission, no interference in the finding of the trial Court is called for by this Court.

12. We have considered the submissions of the learned Counsel for the parties and minutely scanned the impugned judgment as well as the record of the trial Court.

13. Before considering the submissions of the learned Counsel for the accused-appellants in the light of the record of the trial Court, we think it fit and proper to refer and discuss the case law referred by the learned Counsel for the accused-appellants, about their applicability in the facts and circumstances of the present case.

14. In Makhan Singh v. State of Punjab : AIR 1988 SC1705 the Hon'ble Supreme Court, while considering Section 24 of the Evidence Act, 1872 held that extra judicial confession is a weak piece of evidence and in absence of any

corroborative evidence such extra-judicial confession is not reliable. It was also held that where there is no evidence to show that the witness before whom confession was made had any influence with the police or had some status to protect the accused from harassment the same is not material. Para 11 of the judgment is reproduced as under:

11. On August 10, 1985 FIR was lodged by Nihal Singh (P.W. 2) and on August 13, 1985 the appellant went to Amrik Singh (P.W. 3) to make an extra judicial confession. Amrik Singh says that the appellant told him that as the Police was after him he had come and confessed the fact so that he might not be unnecessarily harassed. There is nothing to indicate that this Amrik Singh was a person having some influence with the police or a person of some status to protect the appellant from harassment. In his cross-examination he admits that he is neither the Lumbardar or Sarpanch nor a person who is frequently visiting the police station. He further admits that when he produced the appellant there was a crowd of 10 to 12 persons. There is no other corroborative evidence about the extra judicial confession. As rightly conceded by the learned Counsel for the State that extra judicial confession is a very weak piece of evidence and is hardly of any consequence. The council however, mainly relied on motive, the evidence of last seen, the evidence of recovery of dead bodies and the conduct of the appellant in not making a report about the missing father and son.

15. In Kavita v. State of Tamil Nadu : 1998 CriLJ3624 , the Hon'ble Apex Court considered the evidentiary value of extra-judicial confession and held that it depends upon veracity of the witness to whom it is made. Para 4 of the judgment is reproduced as under:

4. There is no doubt that convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made. It may not be necessary that the actual words used by the accused must be given by the witness but it is for the Court to decide on the acceptability of the evidence having regard to the credibility of the witnesses.

16. In State (Delhi Administration) v. Gulzarilal Tandon : 1979 CriLJ1057 , the Hon'ble Apex Court held that in cases where the case of prosecution rests purely on circumstantial evidence, the motive undoubtedly plays an important part in order to tilt the scale against the accused. It is also well settled that the accused can be convicted on circumstantial evidence only if the circumstances are wholly inconsistent with the innocence of the accused. The relevant portion of para 1 of the judgment is reproduced as under:.We might also mention that in cases where the case of the prosecution rested purely on circumstantial evidence, motive undoubtedly plays an important part in order to tilt the scale against the accused. It is also well settled that the accused can be convicted on circumstantial evidence only if every other reasonable hypothesis of guilt is completely excluded and the circumstances are wholly inconsistent with the innocence of the accused. In the instant case, the prosecution has clearly fallen short of proving this facts as rightly found by the High Court.

17. In Krishnan v. State represented by Inspector of Police : 2008 CriLJ3590 the Hon'ble Apex Court held that in the absence of any cogent, believable and satisfactory evidence, the accused cannot be held guilty of murder only on hypothesis and suspicion.

18. In Sharad v. State of Maharashtra : 1984 CriLJ1738 . The Hon'ble Apex Court considered the point in respect of circumstantial evidence and held that it is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence.

19. In Harishchandra Ladaku Thange v. State of Maharashtra : AIR 2007 SC2957 , the Hon'ble Apex Court held that unless complete chain of circumstantial evidence is proved, the conviction cannot be sustained.

20. The above authoritative pronouncements by the Hon'ble Apex Court, make it clear that there should be cogent, believable and reliable evidence to prove the guilt against the accused. The motive plays an important role in the cases relating to circumstantial evidence. The prosecution has to stand on its own legs and it cannot be allowed to take benefits of weakness of the defence. The evidence relating to extra-judicial confession is a weak type of evidence. In this background,

we now discuss the evidence available in the present case on the point as to whether the appellants can be held guilty for the murder of deceased Shokin.

21. The trial Court, after considering the entire facts and circumstances of the present case and the arguments of the learned Counsel for the parties and after examining the record of the case, recorded that there are following evidence against the accused-appellants for holding them guilty of the charge framed against them :- (1) extra-judicial confession of accused Shafi in presence of P.W. 8 Hussein; (2) last seen evidence i.e. the statement of P.W. 3 Karim Bux, which has been corroborated by P.W. 1 Rasool and P.W. 9 Reshma; and (3) the recovery of articles i.e. slippers, Alvin watch of the deceased and the rope used by accused-persons to strangulate the deceased. The written-report in the present case was lodged by P.W. 3 Karim Bux on 10th February, 1995 wherein it was mentioned that on 9th February, 1995 when he was returning to his home at about 8.00 p.m. after attending natural call, he saw his nephew Shokin (deceased), accused persons Shaft and Ashok going towards their agriculture field; on his asking, Shaft told that they are going to their agriculture field to dust 'rojda', a wild-animal; thereafter he came to his house and slept. On the next morning, his brother Rasool came and told him that Shokin had gone in the night with Shaft and Ashok and has not returned back; thereafter they called Ashok and asked him about Shokin; on this, Ashok replied that Shafi knows about him; thereafter Shaft was called and he was asked about Shokin; on this, Shafi replied that Ashok knows about him. Thereafter they met Hussein and narrated him all the story; thereafter Hussein visited the house of Shaft and, on returning therefrom, he told them what Shaft stated to him that Shokin has been killed and his dead-body has been put in the well known as 'meerama-ka-kua; he admitted his mistake and requested Hussein to save them and not to lodge the report. Thereafter, in order to make an enquiry about the entire incident, they tried to call Shaft and Ashok both simultaneously but they were not found at their respective homes; thereafter he, his brother Rasool, Bhima s/o Lalu, Karlma s/o Lala, went at the well, which is known as 'meerama-ka-kua', and tried to search the dead-body of Shokin by putting 'bilai' (a hook) in the well and the dead-body was recovered. The dead-body was medically examined by P.W. 11 Dr. M. L. Thathera, who proved the postmortem-report Exhibit P. 17. The external appearance of the dead-body was

mentioned as under:

Stout, health, rigor marks present. Both hands are tied on backside by muffler. The skin of sole and hands is puckered. There is froth in both the nostrils. Blood has spread over the upper part of face.

The following injuries were found on the dead-body of the deceased Shokin:

Eyes :- Congested, cornea hazy, pupils dilated

Neck :- Bruise linear mark on left side neck

3' x 1/2' extending from centre of neck to left side. Neck up to the angle of mandible, colour is dark brown;

6. bruise marks' of 1/4' x 1/8' size on left side cheek spreaded all over the cheek;

Rt. side neck :- 3/4 ' x 1/2' bruise mark on Rt. side neck just below the ear;

Bruise mark 1' x 1/2' on Rt. side cheek between the Rt. ear and angle of mouth;

Bruise mark of 1/2' 1/4' on Rt. side neck 2' below the Rt. ear lobule.

There is swelling on neck on both side.

Upper part of body e.g. Neck, face are congested;

Neck muscles - are congested and Qedemaloxi on both side neck.

Mouth is full of fine froth, tongue swollen, Trachea is full of fine froth, on pressure to chest, blood and froth came out of nostrils and mouth in abundance.

In the opinion of the Doctor, the cause of death was as under:

In my opinion the cause of death is due to strangulation & drowning. The duration of death within 48 hours as the rigor mortis was still present.

22. From the statement of P.W. 11 Dr. M.L. Thathera and from the postmortem report (Exhibit P-17), it is clear beyond doubt that the death of deceased Shokin

was homicidal. The Doctor opined the cause of death due to strangulation and drowning.

23. The trial Court, after considering the evidence on the record in the light of submissions of the learned Counsel for the accused-persons, recorded a finding that the death of the deceased was due to strangulation. We have also considered the submissions of the learned Counsel for the accused-appellants in the light of the contents of the postmortem report (Exhibit P. 17) and the statement of P.W. 11 Dr. M.L. Thathera and from the same it is clear that there were number of injuries found on the dead body of the deceased i.e. on the neck, mouth, nose, ear, mandible. The accused Shafi gave his confessional statement before P.W. 8 Hussein that they (Shaft & Ashok) killed Shokin and put his dead-body in the well, which is known as 'meerama-ka-kua'. The said fact was also mentioned in the written report (Exhibit P-3) that accused-persons have killed Shokin and his dead-body has been put in the well, which is known as 'meerama-ka-kua'. Therefore, from the nature of injuries as well as the statement of the prosecution witnesses, we find that the learned trial Court has rightly recorded a finding that the cause of death of deceased was due to strangulation and it was a homicidal death.

24. We may now discuss the evidence of last seen evidence available in the present case. P.W. 3 Karim Bux, in his statement, has specifically stated that on 9th February, 1995 at about 8.00 p.m. when he was returning to his home after attending natural call he saw Shokin (deceased), Ashok and Shaft (both accused) together going towards their agriculture field and, on his asking about their visit. Shaft told him that they are going towards their agriculture field to scare away 'rojda', a kind of animal therefrom, on this he told them that this is a time of offering 'namaaz' and thereafter Shokin tried to come back but both the accused-persons, namely, Shaft and Ashok, did not allow him to return. On the next day morning, his brother Rasool came to him and told about the visit of deceased Shokin with accused Shaft and Ashok and not returning of Shokin in the night. Thereafter they asked Ashok about Shokin; thereupon Ashok became angry and told that he is not their servant and they should find out about him from Shaft. Thereafter they went to Shaft and on their asking he told that they should go to Ashok to make enquiry about him. Thereafter they went to meet Hussein, who went to Shaft and he, on

coming back, told them that they (accused) have killed Shokin and the dead-body has been put in the well, which is known as 'meerama-ka-kua'. He was cross-examined by the learned Counsel for the accused-persons, but therefrom also nothing has come on the record to disbelieve the statement Of P.W. 3 Karim Bux. In these circumstances, we find that the statement of P.W. 3 Karim Bux in respect of last seen evidence is trustworthy. It is also relevant to mention that his statement is corroborated by the statements of P.W. 1 Rasool and P.W. 9 Reshma, who have stated that on 9th February, 1995 at about 7.30 in the evening Shaft and Ashok both came to their house to take Shbkin to accompany them to play a game and thereafter he went with them and did not return at home in the night. In these circumstances, we are satisfied that the finding of the learned trial Court in this regard is based on cogent, believable and reliable evidence. The deceased was seen with the accused-persons and evidence of last seen in the case is trustworthy and cannot be disbelieved.

25. The other evidence regarding extra-judicial confession of the accused Shaft before P.W. 8 Hussein is concerned, we have examined the statement of Hussein, who specifically stated that he went to the house of Shaft and enquired from him about Shokin. Initially Shafi did not tell him anything but when he assured Shaft then he told him that they have killed Shokin and his dead body has been put in the well, which is known as meerama-ka-kua. Accused appellant Shaft also stated before P.W. 8 Hussein that they (accused) have committed a mistake and he (Hussein) should save them and report may not be lodged against them. Soon after this evidence i.e. extra-judicial confession of the accused Shafi before P.W. 8 Hussein, P.W. 1 Rasool, P.W. 3 Karim Bux, P.W. 8 Hussein and P.W. 6 Karim went at the well and the dead-body was recovered therefrom. Therefore, this extra-judicial confession of the accused is corroborated with the recovery of the dead-body from the well, which is known as 'meerama-ka-kua '. In these circumstances, the evidence of extra-judicial confession available in the present case cannot be said to be a weak type of evidence, particularly when it is corroborated by other evidence i.e. recovery of dead-body from the well 'meerama-ka-kua' itself, as stated by accused Shafi in presence of P.W. 8 Hussein. In these circumstances, we are of the view that the evidence of extra-judicial confession available in the present case is trustworthy and the trial Court

rightly relied upon it.

26. Now we come to the evidence regarding recovery of two articles belonged to deceased i.e. slippers and Alvin watch. The accused Shafi, during his custody, gave an information voluntarily on 13th February, 1995 vide Exhibit P-26 about slippers of the deceased and in pursuance thereof the same was recovered vide recovery-memo (Exhibit P-27) in the presence of 'motbirs' P.W. 6 Karima and P.W. 14 Mitthu. Both the 'motbirs' have admitted their signatures on both the exhibits. P.W. 13 Ratan Singh, the Investigating Officer, also proved the said recovery of slippers of deceased on the information and at the instance of accused Shafi. The accused Ashok gave an information during his custody voluntarily about Alvin watch belonged to the deceased and the same was recovered vide recovery-memo (Exhibit P-9). which has been proved by P.W. 6 Karima, P.W. 4 Mitthu and P.W. 13 Ratan Singh. It is also relevant to mention that identification parade was conducted to identify the slippers and Alvin watch of the deceased, by the Civil Judge (Senior Division) and Additional Chief Judicial Magistrate, Beawar. The watch of the deceased was rightly identified by P.W. 1 Rasool and P.W. 3 Karim Bux in presence of P.W. 5 Gajendra Gaur, the Judicial Magistrate, vide identification-memo Exhibit P-6. Similarly, the slippers of the deceased were also rightly identified by P.W. 1 Rasool and P.W. 3 Karim Bux in presence of P.W. 5 Gajendra Gaur, the Magistrate, vide identification-memo Exhibit P-7. Exhibits P.-6 and P-7, both, have been proved by the statements of P.W. 1 Rasool and P.W. 3 Karim Bux and P.W. 5 Gajendra Gaur.

27. In view of the above discussion of relevant evidence in the facts and circumstances of the present case and the exhibits, it is clear beyond reasonable doubt that the entire chain connected the accused-appellant with the crime in the present case is fully proved. The contradictions pointed out by the learned Counsel for the appellants in the statements of P.W. 1 Rasool, P.W. 3 Karim Bux and P.W. 9 Reshmi are of minor nature and the same are liable to be ignored and cannot be said to be fatal in any manner to the prosecution case. No doubt, the Hon'ble Apex Court, in Makhan Singh v. State of Punjab : AIR 1988 SC1705 has held that evidence of extra-judicial confession is a weak piece of evidence but at the same time it has also been held that it requires corroboration. In the present

case the extra-judicial confession is corroborated by the recovery of the dead-body from the well, therefore, it cannot be said that the evidence of extra-judicial confession in the present case is a weak type of evidence; as discussed above, it is clear that it is corroborated by the other evidence also.

28. So far as the submission of the learned Counsel for the appellant about absence of motive in the present case is concerned, no doubt it is a settled law that motive plays an important role in the cases which are based on circumstantial evidence, but so far as the present case is concerned the accused themselves in their statements recorded under Section 313, Cr. P.C. particularly in reply to the question No. 15, admitted that due to animosity the prosecution witnesses have stated against them, therefore, enmity has been admitted by both the accused-persons in their statements recorded under Section 313, Cr. P.C. In addition thereto, P.W. 13 Ratan Singh, the Investigating Officer, stated in his cross-examination when cross-examined by the counsel for the accused, that during investigation of the case he came to the conclusion that the reason of murder was mutual quarrel in between the deceased and the accused-persons. This fact was recorded in the case-diary also. In these circumstances, the aforesaid citations referred by the learned Counsel for the accused are not applicable in the facts and circumstances of the present case. The prosecution has established its case on the basis of its own evidence and it cannot be said that the prosecution has failed to prove the case beyond all reasonable doubt against both the accused-persons.

29. We now come to another submission of the learned Counsel for the accused Ashok that the accused was juvenile on the date of occurrence and the entire trial against him is vitiated or even if the order of conviction is upheld then he cannot be sent to jail and his order of sentence is liable to be set-aside. It is relevant to mention that this Court, when the appeal came up for hearing, vide order dated 17th January, 2008, returned the original record of the trial Court with a direction to submit its report within a period of one month as to whether on the date of occurrence the appellant Ashok was juvenile within the meaning of Section 2(h) of the Juvenile Justice Act, 1986. It was also ordered that the trial Court shall provide opportunity to both the parties to adduce evidence on the points. The order dated 17th January, 2008, reads as under:

During the course of hearing an order dated August 21, 1998 rendered by Special Judge, SC/ST (Prevention of Atrocities) Cases, Ajmer in Criminal Revision Petition No. 45/97 came to our notice wherein learned Judge considered the fact that on the date of occurrence appellant Ashok was below 16 years of age. Learned Judge however, directed learned trial Judge to record the evidence of doctors of the medical team as well as the evidence of the appellant Ashok in regard to his age and then proceeded according to law. It appears that learned trial Judge did not make an inquiry about the age of the appellant Ashok on the date of incident.

The question, therefore, arises as to whether on the date of occurrence appellant Ashok was juvenile within the meaning of Section 2(h) of the Juvenile Justice Act 1986 (which was applicable In the facts of the present case).

Their Lordship of the Supreme Court in Gurpreet Singh v. State of Punjab : 2005 CriLJ126 called for the report of the trial Court.

It was observed in para 20 as under:

In Criminal Appeal No. 710 of 1995 filed by appellant Mohinder Pal Singh, call for a report from the trial Court as to whether on the date of occurrence this appellant was juvenile within the meaning of Section 2(h) of the Juvenile Justice Act, 1986? The trial Court shall give opportunity to both the parties to adduce evidence on this point. Let the entire original records of the trial Court be returned to it. Report as well as records must be sent to this Court within a period of three months from the receipt of this order. Upon receipt of report from the trial Court, final order shall be passed in this appeal.As relevant from the above discussion, We deem it appropriate to call for the report from the learned Additional Sessions Judge (Fast Track), Beawar to examine the report as to whether on the date of occurrence appellant Ashok was juvenile within the meaning of Section 2(h) of the Juvenile Justice Act 1986. Learned trial Court shall provide opportunity to both the parties to adduce evidence on this point.

Deputy Registrar (Judl.) is directed to return the original record to the learned trial Court who shall submit its report within a period of one month from the date of receipt of this order along with the record. Upon receipt of the report from the

learned trial Court the appeal shall be listed for hearing.

30. In response to the above order dated 17-1-2008 of this Court, the trial Court, vide its order dated 25th February, 2008, recorded a finding that the accused Ashok s/o Chhotu was below 16 years of age on the date of the occurrence. Para 14 of the finding of the trial Court reads as under:

14. Uprokta Saaksha Vivechan Se Prakat Hota Hain Ki Prarthi/Abhiyukta Ashok Putra Chhotu, Jaati - Meharat, Niwasi Fatehgarhsalla, Thana Beawar Sadar District Ajmer Vakta Ghatna 16 Varsha Se Kum Aayu Ka tha'

(English translation - From the above discussion of the evidence it is clear that the applicant/accused Ashok son of Chhotu, by Caste Meharaat, resident of Fatehgarhsalla, Police Station Beawar Sadar, District Ajmer, was below 16 years of age at the time of incident).

31. The aforesaid finding of the trial Court has not been challenged by the learned Counsel for the State by filing any written objection or even during the arguments of the appeal. We have gone through the finding of the trial Court and we are satisfied that the trial Court has recorded a correct finding that accused Ashok was below 16 years of age on the date of occurrence.

32. Now the question arises as to what order is required to be passed in respect of accused Ashok, who was juvenile on the date of occurrence.

33. The Hon'ble Supreme Court in Pradeep Kumar v. State of U.P. : 1994 CriLJ148 , was dealing with the case under the provisions of the U.P. Children Act; the accused in that case was convicted under Section 302/34, IPC. At the time of granting Special Leave, the accused produced High School certificate, according to which he was 15 years of age at the time of occurrence. The Hon'ble Apex Court called for the medical-report. The Apex Court was satisfied that the accused had not completed 16 years of age on the date of occurrence. Although the accused had attained the age of 30 years, when the appeal came up for hearing, the Hon'ble Apex Court quashed the order of sentence passed by the trial Court against him. Paras 3 and 4 of the above judgment are reproduced as under:

3. It is thus proved to the satisfaction of this Court that on the date of occurrence, the appellants had not completed 16 years of age and as such they should have been dealt with under the U.P. Children Act instead of being sentenced to imprisonment on conviction under Section 302/34 of the Act.

4. Since the appellants are now aged more than 30 years, there is no question of sending them to an approved school under the U.P. Children Act for detention. Accordingly, while sustaining the conviction of the appellants under all the charges framed against them, we quash the sentences awarded to them and direct their release forthwith. The appeals are partly allowed in the above terms.

34. The Hon'ble Supreme Court in Babban Rai v. State of Bihar : 2008 CriLJ1038 , while dealing with the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000, in respect of an accused, who was convicted under Section 302, IPC, called from the trial Court a report in relation to the age of the appellant on the date of occurrence after giving opportunity to the parties to adduce evidence. Pursuant to the said order, an enquiry was conducted by the trial Court and report dated 3rd April, 2007 was submitted according to which the one appellant therein Babban Rai was found below 16 years of age and another appellant Dharam Nath was found about 18 years of age on the date of alleged occurrence. The Hon'ble Apex Court while upholding their conviction, set-aside their order of sentence in view of the fact that they have now attained majority. Paras 5 and 6 of the above judgment are reproduced as under:

5. So far as the convictions of these two appellants, as confirmed by the High Court, are concerned, learned Counsel appearing on behalf of the appellants is not in a position to point out any error in the order of the High Court whereby convictions of the appellants have been confirmed. Having gone through the impugned judgment and the records, we also do not find any ground to hold that the High Court was not justified in upholding the convictions of the appellants. This being the position, we are of the view that the High Court has not committed any error in upholding convictions of the appellants. Now, the question arises in relation to sentences. In view of our aforesaid finding that these two appellants were Juvenile on the date of alleged occurrence and they have now attained

majority, it would be just and expedient to set aside their sentences and pass an order of releasing them as they cannot be sent to remand home.

6. Accordingly, the appeal is allowed inpart and, while upholding convictions of the appellants, their sentences are set aside and they are directed to be released forthwith, if not required in connection with any other case.

35. In view of the above detailed discussion of the evidence available on the record in the light of submissions of the learned Counsel for the accused-appellants as well as the finding of the trial Court, we are satisfied that there is ample evidence on the record against both the accused-appellants and the trial Court has rightly convicted them for the offence under Sections 302/34 and 201. IPC.

36. So far as accused appellant Ashok is concerned, as per the report dated 25th February, 2008 of the learned trial Court, he was below 16 years of age on the date of occurrence and now he has already attained the age of more than 28 years, therefore, in our opinion, it will not be proper to send him to Juvenile home and we think it fit and proper to set-aside his order of sentence awarded by the trial Court in view of the aforesaid judgments of the Hon'ble Apex Court.

37. Consequently, the appeal of accused appellant shaft is dismissed; his conviction and sentence passed, by the trial Court is upheld.

38. The appeal of accused-appellant Ashok is partly allowed; the order of his conviction passed by the trial Court under Sections 302/34 and 201, IPC is upheld but his sentence of imprisonment awarded by the trial Court is set-aside. He is already on bail, therefore, his bail bonds are cancelled and he needs not to surrender.

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