

Neutral Citation No. - 2025:AHC-LKO:1566-DB

Reserved on 03.12.2024

Delivered on 08.01.2025

**Court No. - 9**

**Case :-** CRIMINAL APPEAL No. - 548 of 2002

**Appellant :-** Jaimangal Yadav

**Respondent :-** The State Of U.P.

**Counsel for Appellant :-** Lt Col Retd Ss.Yadav,Abhineet Jaiswal

**Counsel for Respondent :-** Govt.Advocate

**Hon'ble Mrs. Sangeeta Chandra,J.**

**Hon'ble Mohd. Faiz Alam Khan,J.**

*(Delivered by Justice Mohd. Faiz Alam Khan)*

1. Heard Shri Abhineet Jaiswal, learned Amicus for the appellant as well as Smt. Meera Tripathi, learned AGA for the State- respondent and perused the record.

2. This criminal appeal has been preferred by appellant- Jaimangal Yadav under Section 374(2) Cr.P.C. against the judgment and order dated 8.03.2002 passed by Additional Sessions Judge, Gonda in Session Trial No. 272/96 (State Vs. Jaymangal Yadav) arising out of Case Crime No. 154 of 1996, under Section 302 IPC, Police Station Kotwali Nagar, Gonda, whereby the appellant has been convicted under Section 302 IPC and has been sentenced with rigorous life imprisonment, and fine of Rs. 3000/- and in default of fine to further undergo for three months rigorous imprisonment.

3. The brief facts necessary for disposal of the instant appeal are that the informant, namely, Bhagwan Prasad has lodged a First Information Report at Police Station Kotwali Nagar, District Gonda alleging that he is a resident of Karnailganj, Gonda and is having his Coal Depot at Faizabad by-pass in the vicinity of village Budhai Purwa in the name of Saket Coal Traders where deceased Bhagwati

Prasad Tiwari was working as clerk and appellant Jaimangal Yadav was employed as Chaukidar pertaining to the incident occurred on 29.2.1996 at about 6.30 a.m.

4. It is further stated that on 29.2.96 he along with Shiv Shankar Tiwari and Shiv Bhagwan, after attending a B.D.C. Meeting, came to his Coal Depot and found his clerk Bhagwati Prasad Tiwari dead as he has been assaulted brutally on his head and thereafter he launched a search for appellant Jaimangal Yadav and he was found in the 'Arhar Field' situated nearby and after seeing the informant and his associates he started fleeing but was overpowered and apprehended and thereafter he confessed his guilt in terms that the deceased had levelled false allegation of theft against him and had not paid him his dues, so today at about 6.00 a.m. he assaulted the deceased with 'sabbal' on his head whereby he died and hid himself in the Arhar Field. It is also stated by the informant that he has tied the appellant with a rope at his coal depot and has come to lodge the FIR.

5. On the basis of the aforesaid written information an FIR in case Crime No. 154/1996 under Section 302 IPC was registered at Kotwali Nagar, Gonda and the investigation was entrusted to S.S.I. Shri Deepchand Tiwari.

6. The Investigating Officer arrived at the scene of the crime and prepared the inquest report and took the appellant in custody. Appellant while in the custody of police confessed his guilt before the Investigating Officer and there after on his pointing out a blood stained 'Sabbal' was recovered from the heap of coal situated nearby.

7. The Investigating Officer after completion of necessary paper work sent the dead body of the deceased for postmortem and the postmortem of the deceased was conducted by the Dr. C.M.R. Singh on 1.3.1996 at 4.05 P.M. The age of the deceased was found about 35 years. The *rigor mortis* was present in his whole body and following injuries were noted on his person:-

(i) Lacerated wound 3c.m. x 0.5c.m. Skull cavity deep, on left side of forehead 1.5 c.m. above left eye brow.

(ii) Lacerated wound 2 c.m. x 1 c.m. x skull cavity deep on the left forehead just above left eye brow.

(iii) Lacerated wound 4.5 c.m. x 1.5 c.m. x skull cavity deep on left side of head, 1.5 c.m. above injury no.2.

(iv) Incised wound 2 c.m. x 0.5 c.m. x skull cavity deep on left side of head, 4.5 c.m. above left ear.

(v) Lacerated wound 2.5 c.m. x .5 c.m. x through & through left ear pinna.

8. On internal examination the skull of the deceased was found fractured on its left side. The membranes were found ruptured on left side. Brain was lacerated. As per the opinion of the doctor the death of the deceased has been caused due to hemorrhage as a result of ante mortem injuries.

9. The Investigating Officer has also recorded the statement of the prosecution witnesses, prepared site plan of the place where the offence has been committed and also of the place from where the 'sabbal' was recovered and after finding sufficient evidence submitted charge sheet against the appellant under Section 302 IPC.

10. The trial court framed charges against the appellant under Section 302 IPC which he denied and claimed trial.

11. The prosecution in order to prove its case has presented P.W.1- informant- Bhagwan Prasad Mishra, P.W.2- Shiv Shankar, P.W.3- Ram Pratap Shukla, P.W.4- Dr. C.M. R. Singh, P.W.5- Vaid Kumar Yadav, P.W.6- S.I. Deepchand Tiwari and also relied on documentary evidence e.g. written application Ext. Ka-1, recovery memo of 'sabbal' Ext. Ka-2, inquest report Ext. Ka-3, postmortem report Ext. Ka-4, Chick FIR Ext. Ka-5, G.D. Kayami Ext. Ka-5/1, the site plan Ext. Ka-6, memo of taking plain soil and blood stained soil Ext. Ka-7, memo of taking into custody blood stained blanket and clothes and chappal of the deceased Ext. Ka-8, site plan of recovery of weapon of assault Ext. Ka-9, charge sheet Ext. Ka-10 and necessary papers for sending the body for the post mortem from Ext. Ka-11 to Ext. Ka-15 and forensic lab report Ext. Ka-16.

12. After completion of evidence of the prosecution the statement of the appellant was recorded under Section 313 Cr.P.C. where he denied all the evidence produced by the prosecution and stated further that he was not employed at the coal depot of Bhagwan Prasad (informant) and he has been apprehended from his home and has been falsely implicated in this case and before arresting him, the informant had warned him to give evidence in his favour pertaining to the land, power of attorney of which was in favour of opponent of informant. The appellant in his defence has also produced some documents through list 57 Kha, 58 Kha to 72 Kha

13. The trial court after hearing learned counsel for the parties and after appreciating the evidence available on record found the case of the prosecution proved beyond reasonable doubt and convicted the appellant under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life along with Rs. 3000/- as fine and in default to undergo further imprisonment for three months.

14. Aggrieved by the impugned judgment and order the appellant/accused has preferred the instant appeal.

15. As per the communication received from the Senior Superintendent of Central Jail, Varanasi of date 10.1.2021 the appellant has been released from prison after he was granted remission and thus the the appellant is now not lodged in jail and since the appeal had been admitted, this Court had deputed an Amicus, namely, Shri Abhineet Jaiswal for its assistance.

16. Shri Abhineet Jaiswal, learned amicus vehemently submits that the trial court has committed manifest illegality in appreciating the evidence available on record and has convicted the appellant on the basis of insufficient evidence.

17. It is further submitted that the case of the prosecution was based on circumstantial evidence and it was the duty fo the prosecution to prove each and every circumstances beyond reasonable doubt and the cumulative effect of these proved circumstances must form a chain and this chain must be so strong as to not leave any doubt so far as the role of the appellant is concerned in committing the offence but

the story as cooked up by the prosecution is highly improbable as it is hard to believe that after committing the offence the appellant would hide himself in the 'Arhar Field' and wait for the arrival of the informant and when the informant arrived along with three other associates he would make an attempt to run away.

18. It is also submitted that a specific defence was taken by the appellant before the trial court that he was not employed at the Coal Depot of the informant but this aspect of the matter has not been considered in right perspective by the trial court and despite no evidence having been produced by the prosecution with regard to the employment of the appellant at the Coal Depot of the informant, the trial court has taken it to be proved.

19. It is next submitted that there are embellishments and material contradictions in the testimony of prosecution witnesses, so far as the recovery of a '*sabhal*' on the pointing out by the appellant is concerned.

20. It is further submitted that the appellant is also shown to have made an extra judicial confession before the informant and his other associates. However, there are material contradictions pertaining to the making of such confession and it could not be believed that when the appellant was having all the time in the world to flee away from scene of the crime, he waited for the arrival of informant and it appears that the real story has been suppressed by the informant who was inimical towards the appellant specially in the background that the appellant was a marginal witness of a power of attorney executed in favour of a person who had lodged civil proceedings against the informant.

21. It is further submitted that keeping in view the material contradictions emerging in the evidence of prosecution witnesses and keeping in view the improbable prosecution story the appellant is entitled to be acquitted of the charges and the judgment and order of the trial court is liable to be set aside. Learned Counsel for appellant (Amicus) has placed reliance on following law reports :

"(i) *State Govt. of NCT of Delhi Versus Sunil and Another* reported in (2001) 1 SCC 652

(ii) *Lal Mohammad Manjur Ansari Versus State of Gujarat* reported in (2024) 7 SCC 733

(iii) *Devi Lal Versus State of Rajasthan* reported in (2019) 19 SCC 447

(iv) *Sahadevan and another Versus State of Tamil Nadu* reported in (2012) 6 SCC 403

(v) *Ratnu Yadav Versus State of Chattisgarh* reported in 2024 SCC OnLine SC 1667

(vi) *Raja Naykar Versus State of Chattisgarh* reported in (2024) 3 SCC 481

(vii) *Mohd. Iqbal Versus State of Rajasthan* in Criminal Appeal No. 596/2016 decided by High Court of Judicature of Rajasthan."

22. Learned AGA on the other hand supported the judgment of the trial court and submits that there are two witnesses, namely, informant P.W.1- Bhagwati Prasad and P.W.2- Shiv Shankar before whom the appellant has made extra judicial confession and after arrival of the police he also confessed his guilt before the Investigating Officer and a 'sabbal' has also been recovered on his pointing, which was also found blood stained and the blood stain has also been found in the forensic report of the 'sabbal'.

23. It is further submitted that PW.4- Dr. C.M.R. Singh who had conducted the post mortem of the body of the deceased has opined that the injuries sustained by the deceased may be caused by 'sabbal' and thus there is no contradiction between the oral and medical evidence and no illegality or to say any irregularity has been committed by the trial court.

24. Having heard learned counsel for the parties and having perused the record it is evident that the case of the prosecution before the trial court was based on the circumstantial evidence and the circumstances which have been alleged against the appellant were in terms that when the informant P.W.1- Bhagwan Prasad Mishra had

arrived at his Coal Depot he found the dead body of his clerk, namely, Bhagwati Prasad Tiwari covered in blood as he has been brutally assaulted on his head and a pool of blood was found beneath his head. Second circumstance which was alleged against the appellant was that he had hidden himself in the 'Arhar Field' and after seeing the informant P.W.1- Bhagwan Prasad Mishra and P.W.2- Shiv Shankar and Shiv Bhagwan he attempted to flee away, however, he was overpowered and tied at the spot and he made an Extra Judicial confession before informant and his associates that he has committed the murder of the deceased. The third circumstance which has been alleged against the appellant is that when the police had arrived appellant again confessed his guilt before the Investigating Officer and it is on his pointing a 'sabbal' has been recovered from the heap of coal, which was also found blood stained and the presence of blood on *sabbal* has also been verified in the forensic report. The 4th circumstance alleged against the appellant is that P.W.4- Dr. C.M.R. Singh who had conducted the postmortem of deceased found that the injuries may be caused by 'sabbal' and thus, the trial court found all these circumstances proved beyond reasonable doubt and also relied on the evidence of P.W.1- Bhagwan Prasad Mishra, P.W.2 - Shiv Shankar, P.W.4- Dr. C.M.R. Singh as well as of S.I. Deepchand who had investigated the crime and convicted the appellant.

25. It may be recalled that the vital circumstance which has been alleged against the appellant is of making an extra judicial confession by the appellant before the informant P.W.1- Bhagwan Prasad Mishra and P.W.2- Shiv Shankar who have testified before the trial court. The law with regard to the manner in which the evidence of extra judicial confession is to be appreciated is now no more *res integra* and the same has been set at rest by a catena of judgments rendered by the Hon'ble Supreme Court.

26. In ***Lal Mohammed Manjur Ansari V/S. State of Gujarat*** reported in **(2024) 7 Supreme Court Cases 733**, Hon'ble Supreme Court held that normal rule of human conduct is that a person would confess the commission of a serious crime to a person in whom he has implicit faith.

27. In ***Devi Lal vs State of Rajasthan and Babu Lal vs State of Rajasthan*** reported in (2019) 19 SCC 447, the Hon'ble Supreme Court held as under :

*"11. It is true that an extra-judicial confession is used against its maker but as a matter of caution, it is advisable for the court to look for a corroboration with the other evidence on record. In Gopal Sah v. State of Bihar [Gopal Sah v. State of Bihar, (2008) 17 SCC 128 : (2010) 4 SCC (Cri) 466] , this Court while dealing with extra-judicial confession held that extra-judicial confession is, on the face of it, a weak evidence and the Court is reluctant, in the absence of a chain of cogent circumstances, to rely on it, for the purpose of recording a conviction. "*

28. In the case of ***Sahadevan Versus State of Tamil Nadu***, reported in (2012) 6 SCC 403, the Hon'ble Supreme Court held as under:

*"14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.*

15. Now, we may examine some judgments of this Court dealing with this aspect.

15.1. In *Balwinder Singh v. State of Punjab* [1995 Supp (4) SCC 259 : 1996 SCC (Cri) 59] this Court stated the principle that: (SCC p. 265, para 10)

*“10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.”*

15.2. In *Pakkirisamy v. State of T.N.* [(1997) 8 SCC 158 : 1997 SCC (Cri) 1249] the Court held that: (SCC p. 162, para 8)

*“8. ... It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.”*

15.3. Again in *Kavita v. State of T.N.* [(1998) 6 SCC 108 : 1998 SCC (Cri) 1421] the Court stated the dictum that: (SCC p. 109, para 4)

*“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 [witnesses] to whom it is made.”*

15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in *State of Rajasthan v. Raja Ram* [(2003) 8 SCC 180 : 2003 SCC (Cri) 1965] stated the principle that: (SCC p. 192, para 19)

*“19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.”*

*The Court further expressed the view that: (SCC p. 192, para 19)*

*“19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused...”*

*15.5. In Alope Nath Dutta v. State of W.B. [(2007) 12 SCC 230 : (2008) 2 SCC (Cri) 264] the Court, while holding the placing of reliance on extra-judicial confession by the lower courts in absence of other corroborating material as unjustified, observed: (SCC pp. 265-66, paras 87 & 89)*

*“87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; and (iii) corroboration.*

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89. *A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof.”*

**15.6.** *Accepting the admissibility of the extra-judicial confession, the Court in Sansar Chand v. State of Rajasthan [(2010) 10 SCC 604 : (2011) 1 SCC (Cri) 79] held that: (SCC p. 611, paras 29-30)*

*“29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju v. State of Mysore [(1970) 2 SCC 105 : 1970 SCC (Cri) 320] , Mulk Raj v. State of U.P. [AIR 1959 SC 902 : 1959 Cri LJ 1219] , Sivakumar v. State [(2006) 1 SCC 714 : (2006) 1 SCC (Cri) 470] (SCC paras 40 and 41 : AIR paras 41 and 42), Shiva Karam Payaswami Tewari v. State of Maharashtra [(2009) 11 SCC 262 : (2009) 3 SCC (Cri) 1320] and Mohd. Azad v. State of W.B. [(2008) 15 SCC 449 : (2009) 3 SCC (Cri) 1082] ]*

*30. In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872.”*

**15.7.** *Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in Rameshbhai*

*Chandubhai Rathod v. State of Gujarat [(2009) 5 SCC 740 : (2009) 2 SCC (Cri) 881] held as under: (SCC pp. 772-73, para 53)*

*“53. It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.”*

**15.8.** *Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. (Ref. Sk. Yusuf v. State of W.B. [(2011) 11 SCC 754 : (2011) 3 SCC (Cri) 620] and Pancho v. State of Haryana [(2011) 10 SCC 165 : (2012) 1 SCC (Cri) 223] .)*

### ***The principles***

**16.** *Upon a proper analysis of the aboveresferred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:*

(i) *The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.*

(ii) *It should be made voluntarily and should be truthful.*

(iii) *It should inspire confidence.*

(iv) *An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.*

v) *For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.*

(vi) *Such statement essentially has to be proved like any other fact and in accordance with law.*

**29. In *Ratnu Yadav v/s State of Chhattisgarh* reported in 2024 SCC OnLine SC 1667, The Hon'ble Apex Court held as under :**

*"9. As regards the evidentiary value of an extra-judicial confession, a bench of three Hon'ble Judges of this Court in the case of *Devi Lal v.**

*State of Rajasthan, in Paragraph 11, this Court held thus: "11. It is true that an extra-judicial confession is used against its maker but as a matter of caution, advisable for the court to look for a corroboration with the other evidence on record. In *Gopal Sah v. State of Bihar* [*Gopal Sah v. State of Bihar, (2008) 17 SCC 128: (2010) 4 SCC (Cri) 466*], this Court while dealing with extra-judicial confession held that extra-judicial confession is, on the face of it, a weak evidence and the Court is reluctant, in the absence of a chain of cogent circumstances, to rely on it, for the purpose of recording a conviction. In the instant case, it may be noticed that there are no additional cogent circumstances on record to rely on it. At the same time, *Shambhu Singh (PW 3)*, while recording his statement under Section 164 CrPC, has not made such statement of extra-judicial confession (*Ext. D-5*) made by accused *Babu Lal*. In addition, no other circumstances are on record to support it."*

*(emphasis added)*

*In paragraph 16 of the decision of this Court in the case of Nikhil Chandra Mondal v. State of West Bengal, this Court held thus:*

*16. It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that it is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence."*

*(emphasis added)*

*10. The normal rule of human conduct is that if a person wants to confess to the crime committed by him, he will do so before the person in whom he has implicit faith. It is not the case of the prosecution that the appellant had a close acquaintance with PW-1 for a certain length of time before the incident. Moreover, the version of the witness in examination-in-chief and cross-examination is entirely different. Therefore, in our considered view the testimony of PW-1 is not reliable. Hence, the case of extra-judicial confession cannot be accepted. "*

30. Thus the circumstance of making extra judicial confession before the P.W.1- Bhagwan Prasad Mishra and P.W. 2- Shiv Shankar is to be appreciated in the background of the above precedents.

31. Learned Amicus appearing for the appellant has submitted that the manner in which the extra judicial confession has been stated to have been made by the appellant may not be believed by any prudent person and is contrary to the normal human behavior. The perusal of the record would reveal that P.W.1- informant- Bhagwan Prasad Mishra has stated in his evidence that he had gone to the meeting of B.D.C. and at about 1.45 p.m. he went to his Coal Depot along with

Shiv Shankar Tiwari and Shiv Bhagwan Tiwari and when he arrived at the Coal Depot he found the dead body of the deceased in a pool of blood and the appellant was not found nearby and after searching for quite some time he could be found in a field of 'Arhar' and after seeing them he attempted to run away however he was apprehended by them and then he made extra judicial confession before them that he had committed the murder of the deceased as deceased had accused him of stealing money and also refused to give him money.

32. It is to be recalled that for making an extra judicial confession there must be some reason available with the accused of the crime and the actual words used for making such extra judicial confession are also significant, in order to show as to whether there was any reason available for the accused for making such an extra judicial confession. The P.W.1- Bhagwan Prasad Mishra in his statement recorded before the trial court has stated that the appellant confessed before him that he committed the murder of the deceased as he had levelled false allegation of theft against him and also did not pay him money. However, P.W.2- Shiv Shankar in his evidence has stated that when they apprehended the appellant he made an extra judicial confession that the deceased had spoken of eliminating him (appellant) and it is on this score he has committed his murder. Thus, it may be noticed that both these witnesses of making of extra judicial confession by the appellant, namely, P.W.1- Bhagwan Prasad Mishra and P.W.2- Shiv Shankar have stated different reasons for committing the murder of the deceased by the appellant which cast a cloud of suspicion, with regard of, making of such an extra judicial confession by the appellant.

33. Also, there are glaring contradictions in the testimony of P.W.1- Bhagwan Prasad Mishra and P.W.2- Shiv Shankar with regard to the manner of deriving knowledge of the murder of the deceased while P.W.1- Bhagwan Prasad Mishra had stated that he got knowledge of murder of the deceased only when he had arrived at the scene of the crime; P.W.2- Shiv Shankar has stated that they got the knowledge of the murder of the deceased when they were in the B.D.C. Meeting. This Court could not find any reason why these witnesses are

speaking contrary to each other on this vital issue and this circumstances also affects the case of the prosecution adversely.

34. One other circumstance which is going against the prosecution with regard to the veracity of extra judicial confession allegedly made by the appellant is that it has come in the evidence of the prosecution witnesses that there was a pucca road by the side of the Coal Depot which was going towards Ayodhya/ Faizabad , the appellant could have easily run away by any means of transport available to him on the road in the almost six hours between the alleged murder and the coming of the prosecution witnesses to the scene of crime, however he waited and the appellant, according to the prosecution witnesses , P.W. 1 Bhagwan Prasad Mishra and P.W. 2 Shiv Shankar was hiding in 'Arhar Field' situated nearby waiting for the informant to arrive but surprisingly when he came to know about the arrival of the informant he attempted to run away and was allegedly apprehended by the informant and his associates. This part of the evidence of the prosecution witnesses could not be believed in the background of the fact that it has also come in the evidence of these prosecution witnesses that the appellant was a marginal witness of a 'Power of Attorney' executed in favour of a person who had filed a civil suit against the informant with regard to the cancellation of the sale-deed. Thus, it is evident on the face of the record that the appellant was not having cordial relations with the informant and hence there was no reason, to our understanding as to why he would confess his guilt before such persons who are inimical towards him and in all probability they could not render any help to him.

35. It is further to be seen that for placing reliance on the extra judicial confession it is bound to be voluntarily made while the attending facts and circumstances of the instant case are such wherein it could not be believed that the confession has been made by the appellant out of his free will as he had been tied by the P.W 1 and P.W. 2 with a rope and it is admitted to the P.W.1- Bhagwan Prasad Mishra that after tying the appellant with a rope he had gone to the Police Station to lodge the FIR. Thus according to own version of the prosecution, the extra judicial confession made by the appellant in

presence of informant and P.W. 2 - Shiv Shankar could not be termed as having been made voluntarily and no reliance could be placed on it.

36. Thus, the above mentioned facts and circumstances an evidence available on record render the extra judicial confession relied on by the trial court highly improbable and in our considered opinion the trial court has committed manifest illegality in relying on such a weak evidence.

37. The other circumstance, which has been placed against the appellant is of the recovery of a '*sabdal*'. It is the case of the prosecution that when the police had arrived at the scene of the crime, in pursuance of the FIR lodged by the informant P.W. 1- Bhagwan Prasad Mishra, the appellant also confessed before the Investigating Officer and it is on his pointing the '*sabdal*' was recovered from the heap of bricks. Before moving further it is to be clarified that as per the prosecution version the appellant has confessed his guilt twice. At first he had confessed before the informant P.W. 1- Bhagwan Prasad Mishra and his associate P.W. 2- Shiv Shankar, and the second time he confessed his guilt before the Investigating Officer and it is in pursuance of such confession made while he was in the police custody, the '*sabdal*' was allegedly recovered at his pointing. In this regard the P.W.1- Bhagwan Prasad Mishra has stated that 'Daroga Ji' had arrived at the scene of the crime and arrested the appellant and the appellant had given the '*sabdal*' which he had concealed in the heap of bricks whereby he also confessed to have committed the murder of the deceased. In this regard P.W.2- Shiv Shankar had stated that when the police had arrived and it was asked from the appellant as to by which weapon he has caused the death of the deceased he informed that he has assaulted the deceased with a '*sabdal*' and had concealed the same in the heap of coal from where it was recovered. The P.W.6- Investigating Officer- Deepchand Tiwari in his statement has stated that the appellant has confessed his guilt before him and the '*sabdal*' was recovered from the heap of bricks. Hon'ble Supreme Court in the case of ***Raj Naykar v/s State of Chhattisgarh*** reported in **(2024) 3 SCC 481: 2024 SCC OnLine SC 67** has held as under:

"29. It can thus be seen that, the only circumstance that may be of some assistance to the prosecution case is the recovery of dagger at the instance of the present appellant. However, as already stated hereinabove, the said recovery is also from an open place accessible to one and all. In any case, the blood found on the dagger does not match with the blood group of the deceased. In *Mustkeem v. State of Rajasthan*, this Court held that sole circumstance of recovery of bloodstained weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused. Thus, we find that only on the basis of sole circumstance of recovery of bloodstained weapon, it cannot be said that the prosecution has discharged its burden of proving the case beyond reasonable doubt.

30. As already discussed hereinabove, merely on the basis of suspicion, conviction would not be tenable. It is the duty of the prosecution to prove beyond all reasonable doubt that it is only the accused and the accused alone who has committed the crime. We find that the prosecution has utterly failed to do so."

Thus, it is evident that these witnesses have stated different places from where the recovery of 'sabbal' is shown to have allegedly made, making the recovery of *sabbal* at the pointing of appellant highly doubtful.

38. One more glaring circumstance, which is rendering the recovery of 'sabbal' at the instance of the appellant as highly improbable is that according to the P.W.6 a Memo was prepared with regard to the recovery of *sabbal* made on the pointing of the appellant which has also been produced as Ext. Ka-2 and while under cross examination he admitted that there is cutting and overwriting in this Memo and the signature and left thumb impression of the appellant is also not visible on this memo. In this regard one of the witness of such recovery is P.W.2- Shiv Shankar and he has also acknowledged his signature on this Memo of recovery of *sabbal*. The non availability of signature of the appellant on this memo of recovery appears to be fatal for the prosecution. No explanation has been given by the P.W.6- Investigating Officer- Deepchand Tiwari as to why the signature of the appellant was not obtained on this memo of recovery. Thus the

recovery of 'sabbal' at the instance of the appellant is also highly doubtful.

39. One more glaring circumstance, which is rendering the case of prosecution as highly improbable is that the case of the prosecution is plain and simple that the appellant had committed murder of the deceased by using a 'sabbal', however P.W.4- Dr. C.M.R. Singh in his cross examination has stated that only injury no.4 could be inflicted with a sharp edged weapon while injuries no 1, 2, 3 and 5 sustained by the deceased could only be caused by a blunt object and also that the injuries might have been caused around 4.00 a.m. in the night. Normally hypothetical answers given by a medical witness are not having any evidentiary value but when such answers are pointing towards the innocence of an accused and are emerging contrary to the oral version of the incident, the same could not be brushed aside lightly. There is a vacuum in prosecution story as to how these four injuries, namely, no. 1, 2, 3 and 5 which could not be caused by the 'sabbal' had been sustained by the deceased and thus we are not having any hesitation in opining that the medical evidence in this case is contrary and opposite to the oral version of the incident as revealed in doubtful confession provided by the appellant to P.W. 1 - Bhagwan Prasad Mishra and P.W. 2 - Shiv Shankar.

40. The aforesaid analysis/ appreciation of the evidence made by us is sufficient to demonstrate that firstly the trial court has committed manifest illegality in relying on the evidence of 'extra judicial confession' as the same has not been proved beyond reasonable doubt and is highly improbable, secondly the trial court has also committed another mistake by relying on the recovery of the 'sabbal' at the instance of appellant and thirdly the trial court has committed another mistake by not considering the fact that the medical evidence in this case is running contrary to the ocular version of the incident as provided by the Prosecution Witnesses.

41. We are not discussing any more circumstances further as there are other glaring contradictions omissions and inherent weakness in the testimony of the two prosecution witnesses of fact, as in our considered opinion the above circumstances mentioned by us are

sufficient enough to set aside the judgment of conviction passed by the trial court.

42. In view of the above, the appeal filed by the appellant is having force and therefore the same is **allowed**. The judgment and order of the trial Court dated 8.3.2002 passed by Additional Sessions Judge, Gonda in Session Trial No. 272/1996, (State Vs. Jaymangal Yadav), arising out of Case Crime No. 154 of 1996, under Section 302 IPC, Police Station Kotwali Nagar, Gonda, District Lucknow, whereby the appellant has been convicted under Section 302 IPC is hereby **set aside** and the appellant is acquitted of all the charges framed against him by the trial Court.

43. Appellant is shown to have been released on remission granted by the State Government. Thus, a copy of this judgment shall be provided to him by the trial court, so he may be aware that stigma of being convicted in this case has been removed by according his acquittal.

Sri. Abhineet Jaiswal, Learned Amicus who has ably assisted this Court would get Rs. 15,000/- as Honorarium from Uttar Pradesh State Legal Services Authority.

44. Record of the trial Court along with a copy of this judgment be immediately sent to the trial Court.

**Order Date :- 08.01.2025**

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