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R. KUPPUSAMY

v.

STATE REP. BY INSPECTOR OF POLICE, AMBEILIGAI
(Criminal Appeal No.1706 of 2008)

B

FEBRUARY 19, 2013

**[T.S. THAKUR AND SUDHANSU
JYOTI MUKHOPADHAYA, JJ.]**

Penal Code, 1860 – s.302 – Murder – Life imprisonment
C – *Homicidal death of 10 month old girl child due to drowning*
– *Prosecution case that the child had been thrown into the well*
by her father (appellant) as there were problems between the
appellant and his parents regarding the child being unlucky
for the family – Conviction of appellant by Courts below on
D *basis of extra-judicial confessional statement made by him*
before PW1 – Justification of – Held: Justified – Extra judicial
confessional statement attributed to appellant found to be
voluntary, truthful and unaffected by any inducement that
could render it unreliable or unworthy of credence – It was
E *made by appellant to PW1 almost immediately after*
commission of the crime – Corroboration by medical
evidence and deposition of other witnesses – Deposition of
PW1 inspires confidence in the absence of any material
deficiency in the same either in terms of what has been
F *recorded by him or the procedure that he followed while doing*
so – More importantly, no suggestion that PW1 had any
animosity or other reason which would impel him to go so far
as to involve the appellant in a case of murder – Courts below
correctly appreciated the deposition of PW1 and found him
G *to be reliable.*

Evidence – Extra judicial confession – Appreciation of –
Held: An extra judicial confession is capable of sustaining a
conviction provided the same is not made under any
inducement, is voluntary and truthful – Whether or not these

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attributes of an extra judicial confession are satisfied in a given case will, however, depend upon the facts and circumstances of each case –It is eventually the satisfaction of the Court as to the reliability of the confession, keeping in view the circumstances in which the same is made, the person to whom it is alleged to have been made and the corroboration, if any, available as to the truth of such a confession that will determine whether the extra judicial confession ought to be made a basis for holding the accused guilty.

Evidence – Medical evidence – Appreciation of – On facts, the medical evidence adduced suggests that death of the deceased child was caused by drowning – Congestion of his lungs implies presence of excess fluids in the lungs, a sign suggesting that the child would have inhaled excess fluid while in water – Presence of watery fluid even in stomach of the deceased an important sign of death by drowning – It is almost impossible for water to get into the stomach, if a body is submerged after death – Absence of any other marks on the body of the child also supports the prosecution case that the child had indeed died of drowning.

The prosecution case was that the appellant had murdered his ten month old daughter by throwing her in a well (resulting in the child's death by drowning), as there were problems between the appellant and his parents regarding the child being unlucky for the family. The appellant had allegedly made an extra-judicial confession before PW1, the Village Administrative Officer (VAO). Placing reliance upon the said extra-judicial confession, the Courts below convicted the appellant under Section 302 IPC and sentenced him to life imprisonment.

In the instant appeal, the conviction of the appellant was challenged on grounds 1) that making of the confessional statement was, in the facts and

- A circumstances of the case, not only improbable but wholly unsupported and uncorroborated by any independent evidence; and 2) that extra judicial confession by its very nature is a weak type of evidence which ought to be corroborated by independent evidence
- B in order to support a conviction of the maker of the confession, and no such corroboration was forthcoming in the instant case.

Dismissing the appeal, the Court

- C **HELD:** 1. An extra judicial confession is capable of sustaining a conviction provided the same is not made under any inducement, is voluntary and truthful. Whether or not these attributes of an extra judicial confession are satisfied in a given case will, however, depend upon the
- D facts and circumstances of each case. It is eventually the satisfaction of the Court as to the reliability of the confession, keeping in view the circumstances in which the same is made, the person to whom it is alleged to have been made and the corroboration, if any, available
- E as to the truth of such a confession that will determine whether the extra judicial confession ought to be made a basis for holding the accused guilty. [Para 7] [145-C-E]

- Gura Singh v. State of Rajasthan* (2001) 2 SCC 205; 2000 (5) Suppl. SCR 408; *Sahadevan and Anr. v. State of Tamil Nadu* (2012) 6 SCC 403; *Balbir Singh and Anr. v. State of Punjab* 1996 (SCC) CrI. 1158 and *Jaspal Singh @ Pali v. State of Punjab* (1997) 1 SCC 510 – relied on.
- F

- 2.1. In the case at hand the trial Court as also the first
- G Appellate Court have both found the extra judicial confession attributed to the appellant to be voluntary, truthful and unaffected by any inducement that could render it unreliable or unworthy of credence. The conclusion drawn by the Courts below is not vitiated by
- H any error of fact or law. The confessional statement in the

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case at hand has been made by the appellant almost immediately after the commission of the crime. The appellant is alleged to have gone over to PW-1, Village Administrative Officer, and narrated to the witness the genesis of the incident leading to his throwing his baby daughter into the well at a short distance from his house. PW-1 recorded the confessional statement of the appellant, which was marked Exh. P-1 at the trial, and got the same signed from the appellant and took the appellant with him to the jurisdictional police station. [Para 8] [145-F-H; 146-A-C]

2.2. The deposition of PW-1 inspires confidence in the absence of any material deficiency in the same either in terms of what has been recorded by him or the procedure that he followed while doing so. More importantly, there is no suggestion that this witness had any animosity or other reason which would impel him to go so far as to involve the appellant in a case of murder. Courts below have correctly appreciated the deposition of this witness and found him to be reliable. [Para 10] [146-H; 147-A-B]

3. The statement is corroborated by medical evidence and the deposition of other witnesses. The medical evidence adduced in the case suggests that the death of the deceased child was homicidal and that the same was caused by drowning. The deposition of the doctor PW-10 is clear on this aspect. The doctor has reported the lungs of the deceased to be congested. Congestion of lungs implies presence of excess fluids in the lungs, a sign suggesting that the child would have inhaled excess fluid while in water. In addition, there is a finding by the doctor that there was 200 MLs. of watery fluid even in the stomach of the deceased. According to Modi's Jurisprudence and Toxicology, the presence in the stomach of a certain quantity of water is regarded as an important sign of death by drowning. It is almost

A impossible for water to get into the stomach, if a body is
submerged after death. All this suggests that the death
was caused by taking in water which one usually does
while struggling in a drowning situation. Absence of any
other marks on the body of the child also supports the
B prosecution case that the deceased had indeed died of
drowning. The confessional statement thus gets
sufficient corroboration as to the cause of the death of
the child. That apart the depositions of other witnesses
examined before the trial Court also lend corroboration
C to the prosecution version. [Paras 11, 12 and 13] [147-C-
D, E-H; 148-A-B]

Modi's *Jurisprudence and Toxicology* – referred to.

4. It is thus manifest that there is considerable
corroborative evidence on record to support the extra
D judicial confessional statement of the appellant in which
the appellant has referred to some kind of suspicion and
disagreement between him and his parents regarding the
child because of which he threw the child into the well. It
is not one of those cases where the confessional
E statement is made to a person whose credibility is
suspected nor is it a case where there is no corroboration
forthcoming from other evidence on record. On both
counts the view taken by the Courts below appears to be
perfectly justified. The same, therefore, warrants no
interference under Article 136 of the Constitution. [Para
F 18] [150-A-C]

Case Law Reference:

	2000 (5) Suppl. SCR 408	relied on	Para 5
G	(2012) 6 SCC 403	relied on	Para 5, 6
	1996 (SCC) CrI. 1158	relied on	Para 6
	(1997) 1 SCC 510	relied on	Para 6

H CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1706 of 2008.

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From the Judgment & Order dated 26.02.2007 of the High A
Court of Madras, Madurai Bench in Criminal Appeal (MD) No.
224 of 2005.

Mahalakshmi Pavani, G. Balaji, Mukesh Kumar Singh (for
Mahalakshmi Balaji & Co.) for the Appellant.

M. Yogesh Kanna, A. Santha Kumaran for the Respondent. B

The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. The short question that falls for
determination in this appeal by special leave is whether the
Courts below were justified in convicting the appellant for the C
offence of murder punishable under Section 302 IPC and in
awarding imprisonment for life to him on the basis of an extra-
judicial confession that he is alleged to have made before the
Village Administrative Officer, Veriappur, (VAO for short). The
extra judicial confession was, according to the prosecution, D
reduced to writing by the VAO and found sufficient by the trial
Court as also by the High Court to hold the appellant guilty of
having committed the offence with which he was charged. That
finding and the consequent orders recorded by the Courts
below have been assailed by learned counsel for the appellant E
who argued that the making of the confessional statement was,
in the facts and circumstances of the case, not only improbable
but wholly unsupported and uncorroborated by any independent
evidence. Relying upon several decisions of this Court, it was
argued that the extra judicial confession was by its very nature F
a weak type of evidence which ought to be corroborated by
independent evidence in order to support a conviction of the
maker of the confession. No such corroboration was, according
to Ms. Mahalakshmi Pavani forthcoming in the instant case,
which rendered the conviction and order of sentence passed G
by the Courts below unsustainable in law.

2. Before we refer to the evidence adduced by the
prosecution at the trial in support of the charge framed against
the appellant we may briefly recapitulate the factual matrix in
which the offence is alleged to have been committed. H

- A According to the prosecution the appellant is a resident of Veriappur village of Annamalaiputhur village within the police station limits of Oddanchatram. He got married to one Yuvarani nearly two years before the incident. Within about 10 months of the marriage, the couple was blessed with a female child
- B whom they named Savitha. The prosecution case is that the accused-appellant had developed some suspicion about the birth of the child though it is not very clear whether the suspicion was about the paternity of the child or the child being unlucky for the family. Be that as it may, around the time the incident
- C occurred the appellant is said to have visited his village to perform the mundan ceremony of the child who was just about 10 months old. His parents were not, however, much excited about the mundan ceremony to be followed by the feast. They are alleged to have told the appellant that ever since the child
- D was born, the family was facing problems. The prosecution version further is that since the appellant had already developed a suspicion about the child, he at about 11.00 a.m. on 18th March, 2005 picked up the child and threw her in a well resulting in the child's death by drowning. After throwing the child into the well the appellant is alleged to have gone to PW-5 Sakthivel,
- E Vice President of Veripur Panchayat Board, and told him that he had thrown his daughter into the well. PW-5 Sakthivel is said to have advised the appellant to go to PW-1 S.K. Natarajan, Village Administrative Officer of Veriappur. The appellant accordingly went to PW-1 S.K. Natarajan and narrated the
- F incident to him. PW-1 S.K. Natarajan is alleged to have recorded the statement made by the appellant and taken the appellant along with him to the police station where the former lodged the first information report regarding the incident and produced the extra judicial confession made by the appellant
- G before the police.

3. A case was in the above backdrop registered in the police station at Amblikkai under Section 302 IPC and investigation started in the course whereof the dead body of
- H the child was subjected to post-mortem which revealed that the

child had died because of drowning. A charge sheet was eventually laid by the police against the appellant for committing the murder of his daughter to which charge the appellant pleaded not guilty resulting in his trial before the Court of Sessions at Dindigul.

4. At the trial the prosecution examined as many as 11 witnesses in support of its case. The appellant did not choose to lead any evidence in his defence but pleaded innocence and false implication in the statement made by him under Section 313 Cr.P.C. The trial Court eventually came to the conclusion that the charge framed against the appellant stood proved on the basis of the extra judicial confession made by him before PW-1 S.K. Natarajan, Village Administrative Officer of Veriappur. The Court accordingly pronounced him guilty and sentenced him to undergo life imprisonment. Aggrieved by the order passed by the trial Court, the appellant preferred Criminal Appeal No.224 of 2005 before the High Court of Madras. The High Court concurred with the view taken by the trial Court and dismissed the appeal. In the process, the High Court affirmed the finding recorded by the trial Court that the appellant had indeed made an extra judicial confession which was, according to the High Court, reliable and provided a safe basis for the Court to hold him guilty. The present appeal assails the correctness of the aforementioned judgments and orders as already noticed above.

5. It is common ground that there is no eye witness to the occurrence leading to the death of the unfortunate female child who was just about ten months old. The prosecution case rests entirely on the extra judicial confession attributed to the appellant which has been found by the trial Court as also the High Court to be voluntary and truthful. That a truthful extra judicial confession made voluntarily and without any inducement can be made a basis for recording a conviction against the person making the confessions was not disputed before us at the hearing. What was argued by Ms. Mahalakshmi Pavani,

- A counsel appearing for the appellant, was that an extra judicial confession being in its very nature an evidence of a weak type, the Courts would adopt a cautious approach while dealing with such evidence and record a conviction only if the extra judicial confession is, apart from being found truthful and voluntary, also
- B corroborated by other evidence. There was, according to the learned counsel, no such corroboration forthcoming in the present case which according to her was sufficient by itself to justify rejection of the confessional statement as a piece of evidence against the appellant. Reliance, in support of the
- C contention urged by the learned counsel, was placed upon the decisions of this Court in *Gura Singh v. State of Rajasthan* (2001) 2 SCC 205 and *Sahadevan and Anr. v. State of Tamil Nadu* (2012) 6 SCC 403. In *Gura Singh's* case (*supra*) a two-Judge Bench of this Court was also dealing with an extra
- D judicial confession and the question whether the same could be made a basis for recording the conviction against the accused. This Court held that despite the inherent weakness of an extra judicial confession as a piece of evidence, the same cannot be ignored if it is otherwise shown to be voluntary and truthful. This Court also held that extra judicial confession cannot
- E always be termed as tainted evidence and that corroboration of such evidence is required only as a measure of abundant caution. If the Court found the witness to whom confession was made to be trustworthy and that the confession was true and voluntary, a conviction can be founded on such evidence alone.
- F More importantly, the Court declared that Courts cannot start with the presumption that extra judicial confession is always suspect or a weak type of evidence but it would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak about
- G such a confession and whether the confession is voluntary and truthful.

6. In *Sahadevan's* case (*supra*) a two-Judge Bench of this Court comprehensively reviewed the case law on the subject
- H and concluded that an extra judicial confession is an admissible

piece of evidence capable of supporting the conviction of an
accused provided the same is made voluntarily and is
otherwise found to be truthful. This Court also reiterated the
principle that if an extra judicial confession is supported by a
chain of cogent circumstances and is corroborated by other
evidence, it acquires credibility. To the same effect are the
decisions of this Court in *Balbir Singh and Anr. v. State of
Punjab* 1996 (SCC) CrI. 1158 and *Jaspal Singh @ Pali v.
State of Punjab* (1997) 1 SCC 510.

7. It is unnecessary, in the light of above pronouncements,
to embark upon any further review of the decisions of this Court
on the subject. The legal position is fairly well-settled that an
extra judicial confession is capable of sustaining a conviction
provided the same is not made under any inducement, is
voluntary and truthful. Whether or not these attributes of an extra
judicial confession are satisfied in a given case will, however,
depend upon the facts and circumstances of each case. It is
eventually the satisfaction of the Court as to the reliability of the
confession, keeping in view the circumstances in which the
same is made, the person to whom it is alleged to have been
made and the corroboration, if any, available as to the truth of
such a confession that will determine whether the extra judicial
confession ought to be made a basis for holding the accused
guilty.

8. In the case at hand the trial Court as also the first
Appellate Court have both found the extra judicial confession
attributed to the appellant to be voluntary, truthful and unaffected
by any inducement that could render it unreliable or unworthy
of credence. Having heard learned counsel for the parties at
considerable length and having gone through the evidence
adduced at the trial, we are of the view that the conclusion
drawn by the Courts below is not vitiated by any error of fact or
law. The confessional statement in the case at hand has been
made by the appellant almost immediately after the commission
of the crime. The appellant is alleged to have gone over to PW-

- A 1 S.K. Natarajan, Village Administrative Officer, who was the concerned Village Administrative Officer of Veriappur and narrated to the witness the genesis of the incident leading to his throwing baby Savitha into the well at a short distance from his house. PW-1 S.K. Natarajan recorded the confessional
- B statement of the appellant, which was marked Exh. P-1 at the trial, and got the same signed from the appellant and took the appellant with him to the jurisdictional police station. At the police station PW-1 S.K. Natarajan got the first information
- C report regarding the incident registered as Crime No.61/05 setting legal process into motion in the course whereof Investigating Officer was taken to the well by the appellant in which he had thrown the child. At the well, the Inspector of police prepared the Mahazar which was signed by the witness including PW-1 S.K. Natarajan himself and took charge of the
- D dead body of the child which had, by that time, been brought out of the well. A towel lying about 20 ft. from the well was also seized.

9. PW-1 S.K. Natarajan was cross-examined at length but there is nothing in the cross-examination that could possibly
- E discredit his deposition. No enmity has ever existed between the witness and the appellant to suggest a false implication of the appellant. The only significant suggestion made in the course of the cross-examination, is that the confessional statement was not recorded by the witness in his office as stated by him but
- F at the police station and in the presence of the sub-inspector concerned. This suggestion has been denied by the witness including the suggestion that the statement ought to have been recorded in the prescribed form under the rules and the reason
- G why it was not so recorded was because the statement had been put in black and white at the police station using an ordinary white paper. The witness stated that the statement was recorded on a plain paper because the prescribed forms were not readily available in his office.

- H 10. The deposition of PW-1 S.K. Natarajan inspires

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confidence in the absence of any material deficiency in the same either in terms of what has been recorded by him or the procedure that he followed while doing so. More importantly, there is no suggestion that this witness had any animosity or other reason which would impel him to go so far as to involve the appellant in a case of murder. Courts below have, in our opinion, correctly appreciated the deposition of this witness and found him to be reliable. The concurrent finding of fact returned by the two Courts, has not, in our opinion caused any miscarriage of justice to warrant our taking a different view.

11. Coming to the question whether the statement was corroborated by other evidence, we find that such corroboration is indeed forthcoming in the form of medical evidence and the deposition of other witnesses. The medical evidence adduced in the case suggests that the death of the deceased child was homicidal and that the same was caused by drowning. The deposition of PW-10 Dr. A. Muthusamy, in our opinion, is clear on this aspect, although it was vehemently contended by Ms. Mahalakshmi Pavani, that the doctor had not mentioned the presence of water in the lungs of the child which, according to her, showed that the story of the child dying by drowning was unsupported by medical evidence. The fact, however, remains that the doctor has reported the lungs of the deceased to be congested. Congestion of lungs implies presence of excess fluids in the lungs, a sign suggesting that the child would have inhaled excess fluid while in water. In addition, there is a finding by the doctor that there was 200 MLs. of watery fluid even in the stomach of the deceased. According to *Modi's Jurisprudence and Toxicology*, the presence in the stomach of a certain quantity of water is regarded as an important sign of death by drowning. It is almost impossible for water to get into the stomach, if a body is submerged after death.

12. All this suggests that the death was caused by taking in water which one usually does while struggling in a drowning situation. Absence of any other marks on the body of the child

A also supports the prosecution case that the deceased had indeed died of drowning. The confessional statement thus gets sufficient corroboration as to the cause of the death of the child.

B 13. That apart the depositions of other witnesses examined before the trial Court also lend corroboration to the prosecution version. For instance PW-2 Kanakaran deposed that he was plucking chilly in his field near the field of the appellant on the fateful day. At around 12.00 noon the witness heard someone crying at Chelimedu. The witness and other persons in the vicinity rushed and looked into the well only to find the dead body of the child floating. The witness descended into the well and picked up the child and brought her out. The child was dead. The wife of the appellant was crying and saying that the child had been thrown into the well and that the appellant had killed her.

D 14. In cross-examination the witness expressed ignorance about any 'mundan' ceremony or arrangements for the same having been made by the appellant and that he had no invitation for any such ceremony. The wife of the appellant was, according to the witness, saying that the appellant 'suspected the birth' of the child meaning thereby that the appellant was either suspicious about the paternity of the child or her being unlucky for the family.

F 15. To the same effect is the statement of PW-3 Palanisamy according to whom the wife of the appellant was crying aloud. Persons from the nearby fields came running to the well and so did this witness. The appellant's wife was heard saying that the child had been killed. Kanakaran PW-2 climbed down the well and brought the body of the child out and kept the same on the western side of the well. Inspector of police reached in due course and interrogated him.

H 16. PW-4 Manoharan was declared hostile but was cross-examined and confronted with the statement made before the police regarding the appellant having been seen by him

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walking away from the place of occurrence under tension. PW-5 Sakthivel, President of Veripur Panchayat Board, stated that the appellant had come to him and told him that the child had fallen into the well and asked him as to what he should do in the matter. He had told him to go to Maniakarar. This witness was also declared hostile and confronted with the statement made before the police under Section 161 of the Cr.P.C.

17. Statement of PW-6 Palaniammal who happened to be the grandmother of the deceased child is also significant. This witness stated that the child was born 10 months after the marriage of the appellant. The wife of the appellant had stayed on with her parents' for seven months after the child was born. She was finally brought to her matrimonial house by the witness and the appellant. Three months later, on 18th March, 2005 the appellant returned from Pondicherry where he worked and told her that he had come for performing the 'mundan' ceremony of his daughter and asked the witness why she was going to the field when such a ceremony was being held. The witness stated that if the ceremony had to be organised he should have informed them ten days earlier so that they could have arranged to perform the ceremony in a grand manner. The witness told him that since she had engaged two persons for picking groundnuts, he should take his father and perform the mundan. In due course, the father of the appellant also reached the field and while picking up groundnuts along with the labourers, they received the information that the child was missing. They rushed back only to find the child floating in the well. The presence of the appellant in the village on the date of the occurrence is established by the deposition of this witness and so is the fact that the parents of the appellant were not much concerned or happy to join the proposed mundan ceremony. The prosecution case, it is important to note, is that ever since the child's birth, there were problems between the appellant and his parents regarding the child being unlucky for the family which resulted in the unfortunate incident of the appellant throwing the child into the well.

- A 18. It is manifest from the above that there is considerable corroborative evidence on record to support the extra judicial confessional statement of the appellant in which the appellant has referred to some kind of suspicion and disagreement between him and his parents regarding the child because of
- B which he threw the child into the well. Suffice it to say that it is not one of those cases where the confessional statement is made to a person whose credibility is suspected nor is it a case where there is no corroboration forthcoming from other evidence on record. On both counts the view taken by the
- C Courts below appears to us to be perfectly justified. The same, therefore, warrants no interference from us under Article 136 of the Constitution.

19. In the result this appeal fails and is hereby dismissed.

D B.B.B.

Appeal dismissed.