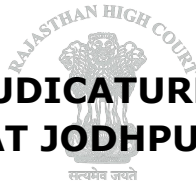




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**



D.B. Criminal Appeal No. 662/2003

CNR: RJHC010203382003 | URN: CRLA / 1507U / 2003

Smt. Tara w/o Peter, R/o Ambapura, Police Station, Kushalgarh,
District Banswara

-----Appellant

Versus

State of Rajasthan

-----Respondent

For Appellant(s) : Mr. Rakesh Arora
For Respondent(s) : Mr. Shrawan Singh Rathore, PP

**HON'BLE MR. JUSTICE MUNNURI LAXMAN
HON'BLE MR. JUSTICE CHANDRA PRAKASH SHRIMALI**

Order

26/10/2026

1. The present criminal appeal has been directed against the judgment of conviction and sentence dated 29.05.2003 passed by the learned Additional Sessions Judge (Fast Track) No. 2, Banswara, in Sessions Case No. 115/2002 (141/2002), whereby the appellant, along with another accused, who has since died, was convicted of the offences punishable under Sections 302/34 and 120-B of the IPC and sentenced to undergo life imprisonment, along with a fine of Rs. 1,000/-, and, in default of payment of the fine, to further undergo one month's simple imprisonment.
2. The sum and substance of the prosecution case is that the deceased was the husband of the present appellant. They both were working in a school and were residing together, along with their children, i.e., P.Ws. 1 to 3, in the portion allotted to them within the school premises. The incident occurred on 20.05.2002



between 10:15 PM and 11:30 PM. The murder was committed within the residential premises occupied by the deceased and the appellant. Initially, an FIR was lodged by the present appellant, who is the wife of the deceased. As per the FIR, the initial information regarding the murder was given to the father of the school, who informed the police about the incident. The police, having reached the spot, received the oral First Information Report from the appellant, which was reduced to writing under Exhibit P-20. As per the initial report, the appellant and the deceased were together until 10:15 PM, when the appellant parted company with the deceased. Thereafter, until 11:30 PM, she was with the children in another room, where they were watching T.V. At 11:30 PM, the appellant went into the deceased's room and found that he had been murdered. Immediately, she brought this fact to the notice of her children and thereafter informed the father of the school. The present case was subsequently registered. During the investigation, the police found that the appellant had committed the murder of the deceased in conspiracy with another accused, namely, Pratap. The present appellant had murdered the deceased because Pratap was allegedly involved in an illicit relationship with her.

3. The prosecution, to support its case, examined P.W. 1 to 20 and relied upon Exhibit 1 to 32. The entire case of the prosecution rests upon the circumstantial evidence. Initially, the prosecution relied upon the circumstance of last seen together by the deceased and the appellant and recovery of incriminating material in pursuance of confession by the Pratap, the other accused and extrajudicial confession made by the present



appellant before the P.W. 7 and 8. The prosecution also relied upon the motive as one of the circumstances. The motive, according to the prosecution, was that the appellant and Pratap were having illicit relationship and the deceased was coming in their way; as such, they conspired to kill the deceased. As per their conspiracy they committed the offence. In order to prove the motive, the prosecution relied upon the evidence of P.W. 4 and 5. The prosecution also relied upon the evidence of P.W. 1 to 3 who were the children of the deceased to support the last seen theory. The Trial Court, on the basis of the above circumstantial evidence, convicted the present appellant as well as Pratap for the offences charged and accordingly, they were sentenced as indicated herein-above.

4. Both the accused filed separate appeals against the order of conviction and sentence. The appeal filed by Pratap was recorded as having abated as he died during the pendency of the appeal.

5. The present appeal has been filed by the wife of the deceased. The prosecution has relied upon three circumstances to support the conviction of the present appellant, namely: (i) the appellant having been last seen with the deceased prior to his death; to support this circumstance, the prosecution relied upon the evidence of P.Ws. 1 to 3, who were the children of the deceased and the appellant; (ii) the motive, namely, the alleged illicit relationship between the appellant and Pratap; to support this circumstance, the prosecution examined P.Ws. 4, 5 and 11; and (iii) the extrajudicial confession allegedly made by the



appellant before the brothers of the deceased, namely, P.Ws. 7 and 8.

6. The The prosecution also relied upon the Exhibit P/20, which is the First Information Report, which shows that she was with the deceased up to 10:15 PM and she had again seen the deceased in a pool of blood, having succumbed to the injuries at 11:30 PM. As seen from the Exhibit P/20, the appellant claimed that she was not with the deceased between 10:15 PM and 11:30 PM. As per the post-mortem report, the death had occurred 6 to 24 hours prior to the post-mortem examination. The post-mortem examination was done on 21.05.2002 at 1 PM. The time of death could have been even prior to 10:15 PM. In the First Information Report, the appellant claimed that she was with the children in a separate room watching T.V., and the children also supported the said claim of the appellant. That means she was able to prove that she was with her children between 10:15 PM and 11:30 PM. The FIR shows that the time of death was between 10:15 PM and 11:30 PM. The FIR, if closely examined, cannot be said to be a confession, as it lacks self-incriminating material, and contents of such a report can also be taken as admissible evidence to prove the admissions under Sections 17 and 21 of the Indian Evidence Act. Her admission, as supported by the children, was that she was not with the deceased between 10:15 PM and 11:30 PM. Even the prosecution case is that the offence was committed between 10:15 PM and 11:30 PM, and it is proved that during the said period, the appellant was not with the deceased, as proved from the evidence of her own children; the presumption and obligation to explain the circumstances under which the deceased died, as





required under Section 106 of the Indian Evidence Act, was discharged by the appellant.

7. In order to establish the second circumstance, i.e., motive, the prosecution examined P.Ws. 4 and 5, who were the employees of the school. Their evidence is only to the extent that they used to receive a phone call from Pratap asking the appellant to attend the call, and the appellant used to attend the call of Pratap and there was a conversation between them. To the extent of the evidence of these witnesses, such witnesses are relevant, and these witnesses do not speak about any illicit relationship between the appellant and Pratap. The other important circumstance is that Pratap's mother and the appellant's mother are real sisters; that means, they are closely related. Out of that relation, there might be a possibility of such conversation. Based on the conversation between the appellant and Pratap, it cannot be inferred that they had any illicit relationship in the absence of any other evidence. Therefore, this evidence of the prosecution is of no help to prove the motive also.

8. The third circumstance relied upon by the prosecution against the present appellant is the extrajudicial confession. It is needless to observe that extrajudicial confessions are a weak piece of evidence, and unless some corroboration is available, it is not safe to convict the accused on the basis of such a weak piece of evidence. Even to admit the extrajudicial confession, the prosecution is required to establish that such an extrajudicial confession was voluntary, it was truthful and was made in a fit state of mind. When extrajudicial confessions are to be taken as a relevant piece of evidence, the witnesses must reproduce the





exact words uttered by the maker of the confession. We have examined the evidence of P.Ws. 7 and 8, who are the real brothers of the deceased, and their evidence do not specifically say the date on which such a confession was made voluntarily and under what circumstance such a confession was made. No person, in a similar circumstance, would make a confession to the real brothers of the deceased. Under what circumstance such a confession was made to them has not been indicated, and their evidence is also lacking the exact confessions made by the appellant. While scrutinising the evidence of extrajudicial confession, the Court must satisfy the test of credibility. Having seen the relationship of the witnesses with the deceased and the lack of exact words in which the confession was made, as well as the lack of the date and place where the confessions were made, we feel that these witnesses have not passed the test of credibility. Therefore, in the absence of any corroborative piece of evidence, reliance on the testimony of these two witnesses to prove the extrajudicial confession is unsafe. There is no other corroborating circumstance supporting the present circumstance, and it is therefore unsafe to record a conviction on the basis of the above two witnesses' evidence, whose evidence has not passed the test of credibility. We find that the Trial Court has committed an error in placing reliance on the sole circumstance of extrajudicial confession without properly examining and appreciating the evidence of P.Ws. 7 and 8. In the said background, the instant appeal is required to be allowed.

9. In the result, the present appeal is allowed and the judgment of conviction and sentence dated 29.05.2003 is set



aside. The Superintendent of Central Jail, Jodhpur is directed to release the appellant, if she is not required in any other criminal case. The operative portion of the judgment shall be communicated to the concerned jail authorities.

10. Pending applications, if any, shall also stand disposed of.

(CHANDRA PRAKASH SHRIMALI),J

(MUNNURI LAXMAN),J

Crt_4 (2099)
S-B/12
Nishant Kumawat

