

Supreme Court of India

Sakharam Shankar Bansode vs State Of Maharashtra on 2 April, 1993

Equivalent citations: AIR 1994 SC 1594, 1994 CriLJ 2189

Bench: K J Reddy, G Ray

JUDGMENT

1. Special leave granted.

2. The sole accused in the case is the, appellant. He is convicted under Section 302 Indian Penal Code and sentenced to undergo imprisonment for life for the offence of committing the murder of one Nirmala. The occurrence is said to have taken place in a multi-storeyed building near the stair-case where she was working as a maid servant in one of the flats. The deceased was the wife of P.W-5 and they were residing in Chembur, Bombay and the accused was residing in the adjacent hut along with his mother and younger brother. P.W-5 suspected that the accused had developed illicit intimacy with the deceased and also slapped him and asked him not to visit his house. About a month thereafter, P.W-5 went to his native place at Satara, leaving his wife at Bombay. The accused tried to renew the illicit intimacy with wife of P.W-5 but she did not respond. Two days prior to the incident, the accused threatened the deceased with dire consequences in case she did not leave her husband and children and join him. The deceased told her sister (P.W-9) about the threat given by the accused. On the day of occurrence, 3-5-77, the deceased went to the house of P.W-3 and worked there as a maid-servant up to 11.00 a.m. and left the place thereafter and she was found dead with several incised wounds in a pool of blood at the landing place of first floor of the building in the Sindhi Society, Chembur. P.W-1, owner of the building informed the police. A case was registered, inquest was held and the dead body was sent for postmortem. The doctor found several incised wounds which were fatal. The A.P. I. Baware, investigated the case and recorded the statements of P.Ws. 1, 2, 9 and 6. P.W 12, Head Constable was deputed to trace the accused. But the accused was found absconding. On 8-5-77 it is alleged that the accused visited the house of P.W-11, who is supposed to be his friend and was residing there at Pravaranagar - about 350 kms. away from Bombay. P.W-11 deposed that the accused came to his house and had meal with him and while taking rest, the accused confessed that he committed the murder of the deceased because he was infatuated towards her and since she refused to share his company. Soon after, the accused left the place taking Rs. 2.00 from P.W-11. On 8-5-77, the Head Constable (P.W-12) contacted P.W-11 and coming to know about the extra-judicial confession made by the accused recorded P.W-11's statement and went in search of the accused and ultimately arrested him in a different village on 13-5-77 and was produced before the investigating officer. He seized the bloodstained clothes of the accused on 14-5-1977, which, according to the prosecution, the accused was still wearing. It is further alleged that at the instance of the accused, the dagger was recovered from a gutter. On completion of the investigation, the charge-sheet was laid.

3. The accused totally denied the offence and stated that a false case has been put up against him. He also denied that he made a confession to P.W-11 about the alleged crime. The trial Court relied upon the circumstances viz., the motive, recovery of the dagger and also blood-stained cloth and retracted extra judicial confession.

4. It is well-settled now that a retracted extra-judicial confession, though a piece of evidence on which reliance can be placed, but the same has to be corroborated by independent evidence. That apart, the court must be satisfied that the confession alleged to have been made to P.W-11 was true and voluntary one and in judging the same, the conduct of P.W-11 and the circumstances which impelled the accused to make such a statement to P.W- 11 should be above suspicion. P.W-11 deposed that he and the accused studied together some years ago and thereafter they left the school and P.W-11 was working as a labourer. P.W- 11 further admitted that 7 or 8 years back, the accused and the father left the village and two years prior to this occurrence he met him and during the period, the accused did not even visit his house. P.W-11 further admitted that he did not inform anybody and he did not even think of informing the police even after coming to know that the accused committed the murder. Though he has stated that he informed his mother but no statement of the mother has been recorded as such. P.W-11 further deposed that on 8-5-77 the accused was living in the village on which date he was arrested. But he has not stated so before the police. This conduct of P.W-11 throws any amount of suspicion on his veracity. Unless we are satisfied that the extra-judicial confession itself is true, voluntary and reliable we cannot proceed further to examine whether there is any other independent corroboration evidence. There are many suspicious features in the evidence of P.W-11. It becomes highly doubtful as to why the accused should cover such a long distance and go all the way to P.W-11 to confess his crime and then immediately leave his house. This is a retracted extra judicial confession which is the sole basis on which both the courts have relied and based the conviction. We are not satisfied with the evidence of P.W-11 and his conduct also throws any amount of doubt about the truthfulness and the version given by him. If P.W 11 's evidence becomes unreliable, then there is no other circumstance to connect the accused with the crime. In the result, the appellant is given benefit of doubt and the conviction and sentence awarded against him are set aside. The appeal is accordingly allowed.