



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 582 OF 2013

NEELAM KUMARI

...APPELLANT

VERSUS

THE STATE OF HIMACHAL PRADESH

...RESPONDENT

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

1. This Criminal Appeal challenges the impugned judgment and order dated 11th December, 2009 passed by the High Court of Himachal Pradesh whereby the conviction and sentence of the appellant has been affirmed. The appellant has been convicted under Section 302 of the Indian Penal Code, 1860¹ for committing murder of her infant son and has been sentenced to undergo imprisonment for life by the Trial Court.

2. The facts in brief are that Nikku Ram (PW-1), who is the complainant and husband of the appellant, was married to Nirmala

¹ For short, 'the IPC'

Devi in 1982. As there was no issue out of the said wedlock, in 2004, with the consent of Nirmala Devi, Nikku Ram married the appellant and started residing with her in a newly constructed house at village Nand. However, Nikku Ram provided a separate residence to his first wife Nirmala Devi in his ancestral village Katli.

3. In 2005, the appellant gave birth to a male child. The appellant never visited the ancestral village Katli and she used to dissuade her husband also from visiting the said village. The appellant used to threaten Nikku Ram that if she is compelled to visit village Katli, she would kill her son.

4. When father of Nikku Ram died on 3rd December, 2006, the appellant did not visit village Katli to mourn his death. She only visited the village Katli on 8th December, 2006 along with her infant child. However, she returned the same day along with her husband and the infant child. Thereafter, Nikku Ram along with his brother went to market to purchase some grocery items to perform post-death rituals of his father, leaving behind the appellant and his child in the house at village Nand. Around 08:30 p.m., when Nikku Ram returned to his house in village Nand, he did not find his wife and child there. He enquired about them from his tenant Dr. Sandesh Guleria (PW-2). Thereafter, he went to village Katli and

stayed there for a night. On 9th December, 2006 at 07:30 a.m., Nikku Ram received a telephonic call from the appellant asking about his whereabouts. At the same time, one Ram Pal informed Nikku Ram that he should reach his village Nand as his son was ill. Thereafter, he proceeded to his village Nand and found his son lying on the cot. Dr. Sandesh Guleria (PW-2), who was the tenant of Nikku Ram, examined the child and told Nikku Ram to immediately take the child to the hospital at Nalagarh as the child was appeared to have been strangulated. There was a circular mark found on the neck of the child which had turned blue. The child was taken to the hospital at Nalagarh where the doctor declared that the child was brought dead.

5. On the basis of the statement of Nikku Ram, a first information report came to be registered. The dead body of the child was sent for autopsy. On examination of the dead body, Dr. Sunita Sood (PW-10) found nail marks on the left side and ligature marks around the neck extending up to back. Lungs, heart and vessels were found congested. The contents of the abdomen were in liquid form. As per doctor's opinion, the cause of death was asphyxia. Doctor confirmed that the death was due to throttling. Dr. Sunita Sood (PW-10) stated that the ligature marks found on the neck of

the child were due to some pressure by *dupatta* which caused asphyxia and led to death by throttling.

6. Extra-judicial confession admitting the killing of her son is alleged to have been made by the appellant separately one before Nikku Ram (PW-1) and Umrawati (PW-5), and another before Bhagwanti (PW-4), Pradhan of Gram Panchayat Nand, in presence of Krishan Lal (PW-3). However, the appellant pleaded not guilty.

7. The appellant was interrogated. On her interrogation, she produced one green *dupatta* which was allegedly used by her in the commission of the crime. As per the forensic report, blood and human skin tissues were found on the *dupatta*.

8. The appellant's version is that except her father-in-law, no one liked her in her husband's family. Nirmala Devi, first wife of Nikku Ram, used to threaten her that if she would not leave her husband, she would kill the child. According to her, on 8th December, 2006, she stayed in village Katli for a night. She kept her child on the bed of Nirmala Devi and she slept on the floor. When she woke up in the morning, she found her son unconscious and unresponsive. She took the child to a doctor. After examining the child, the doctor advised her to take the child to the hospital at Nalagarh. When she

came out of the doctor's room, her husband Nikku Ram had arrived there, and both took the child to the hospital at Nalagarh. However, Nikku Ram contradicted the version of the appellant. As per the statement of Nikku Ram, the appellant never stayed in the house at village Katli and she, in fact, stayed at village Karlata which was 01 kilometre away from village Nand.

9. The Trial Court after considering the evidence on record, convicted the appellant and sentenced her to undergo imprisonment for life *vide* judgment and order dated 20th July, 2007. An appeal preferred by the appellant against her conviction and sentence came to be dismissed *vide* impugned judgment and order dated 11th December, 2009 passed by the High Court. Hence, this Appeal.

ANALYSIS & FINDINGS

10. The conviction of the appellant rests significantly on alleged extra-judicial confessions made to her husband Nikku Ram (PW-1), Ward Member Krishan Lal (PW-3), Pradhan Bhagwanti Devi (PW-4), and Umrawati (PW-5).

11. It is settled law that extra-judicial confessions are generally considered weak evidence and should be corroborated by other, independent evidence. This Court in ***Sahadevan & Anr. vs. State***

of Tamil Nadu² aptly summarized this principle in the following words:

“12. ...It is a case based upon circumstantial evidence. In case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. Furthermore, in case of circumstantial evidence, where the prosecution relies upon an extra-judicial confession, the court has to examine the same with a greater degree of care and caution. 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.”

12. This position of law has been followed in a plethora of judgments of this Court, including **SK. Yusuf vs. State of West Bengal**³, **Pancho vs. State of Haryana**⁴ and **Jagroop Singh vs. State of Punjab**⁵. Further, this Court in **Chandrapal vs. State of Chhattisgarh (Earlier M.P.)**⁶ had specifically held as follows:

“11. ...However, this court has consistently held that an extra judicial confession is a weak kind of evidence

² 2012 INSC 209.

³ 2011 INSC 415.

⁴ 2011 INSC 773.

⁵ 2012 INSC 296.

⁶ 2022 INSC 629.

and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession. ...”

13. It is to be noted that during examination of the appellant under Section 313 of the Code of Criminal Procedure, 1973⁷, she had negated the extra-judicial confessions and in the said statement, she had provided an alternative explanation. She stated that when she found her child unresponsive in the morning, she started crying. On hearing her cries, two women came and made enquiries. One of the women, namely Sita Devi, who was allegedly a non-interested witness to the extra-judicial confession, was never examined by the prosecution. While the prosecution is not required to examine every possible witness, it must ensure that those witnesses essential to substantiate the truth are produced before the Court. Failure to do so without adequate explanation, may cast doubt on the prosecution’s case as held by this Court in the case of ***Gaurav Maini vs. The State of Haryana***⁸ that non-examination of a relevant witness at the trial persuades the Court to draw an adverse inference against the prosecution.

⁷ For short, ‘the Cr.PC’

⁸ 2024 INSC 488.

14. Beyond these alleged confessions, the case of the prosecution rests heavily on circumstantial evidence. In this regard, we find it pertinent to mention the five ‘golden principles’ for evaluating circumstantial evidence which originated in ***Hanumant vs. The State of Madhya Pradesh***⁹ and crystallized in ***Sharad Birdhi Chand Sarda vs. State of Maharashtra***¹⁰ namely:

- (a) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned “must or should” and not “may be” established;
- (b) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (c) The circumstances should be of a conclusive nature and tendency;
- (d) They should exclude every possible hypothesis except the one to be proved; and
- (e) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion

⁹ 1952 INSC 41.

¹⁰ 1984 INSC 121.

consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

15. At the outset, we note that the appellant's whereabouts during the most critical period are not conclusively established. Per her husband Nikku Ram (PW-1), on 8th December, 2006, the appellant came back to village Nand with him from village Katli. However, he further stated that he did not find the appellant and the child at their house in village Nand when he returned from *Kainchi Mor* at around 08:30 pm on the same day, and the appellant called him the following morning to enquire where he had spent the previous night i.e., per his statement, husband and wife did not encounter each other the night of 8th December, 2006. We also note that he has admitted before the Trial Court that the house in village Katli was double-storeyed, meaning the appellant could have been present there overnight without his knowledge. Dr. Sandesh Guleria (PW-2), residing in village Nand, also stated that he was asleep from 04:00 pm to 06:00 pm, and did not see the appellant post 06:00 pm.

16. The medical evidence suggests a significant gap between the alleged time of strangulation and the medical examination, with approximately two hours passing before death and eight hours

before examination. This extended timeline introduces considerable uncertainty about when and how the fatal injuries occurred. In other words, during this time gap, numerous events could have transpired, and various individuals other than the appellant could have had access to the child. In our view, this intervening period weakens the prosecution's ability to establish an unbroken chain of events leading inexorably to the conclusion of the appellant's guilt.

17. The recovery and treatment of the alleged murder weapon is similarly troubling. It is the case of the prosecution that a green *dupatta* used to murder the child (Ex.P2) was recovered from the appellant during the interrogation in the presence of Krishan Lal (PW-3) and Bhagwanti Devi (PW-4). It was noted by the Trial Court that it is a commonly available *dupatta*, and that the appellant has strenuously denied producing the same by her in her judicial statement under Section 313 of the Cr.PC.

18. Furthermore, the *dupatta* was never shown to Dr. Sunita Sood (PW-10) who conducted the postmortem examination. This creates a fundamental disconnect in the chain of evidence. It seems obvious that the doctor who determined the cause of death must be given the opportunity to assess whether the alleged murder weapon was consistent with the injuries observed on the deceased child.

19. On the point of the alleged weapon, we also note that while the forensic examination reportedly found blood stains and human skin tissues on the *dupatta*, there is no evidence establishing that these materials belonged to the deceased child himself. Therefore, their presence on the *dupatta* cannot be conclusively linked to the offence. Common items of clothing may contain various biological materials from everyday use, and without specific identification, such evidence remains ambiguous at best. The finding that the cause of death “*could be due to throttling*” is also tentative.

20. We also find it pertinent to point out that if the appellant had indeed killed her child, her subsequent conduct is difficult to reconcile with guilt. Rather than attempting to conceal the crime or flee, she proceeded to village Nand to seek medical assistance for the child. Specifically, she took the child to their tenant, Dr. Sandesh Guleria (PW-2). Logically, such behaviour is more consistent with innocence than guilt. At the very least, represents a significant inconsistency in the prosecution’s narrative. It is difficult to reconcile that the appellant was cold-blooded enough to strangle her own child but urgently sought medical help for that child shortly thereafter.

21. This Court has repeatedly affirmed that the strength of the motive plays a crucial role in establishing the credibility of the prosecution's case. While a weak or absent motive alone may not be sufficient to acquit an accused if other circumstances form a complete chain pointing unerringly to guilt, it significantly weighs in favour of the accused and creates a reasonable doubt. In this regard, we reproduce a pertinent extract from this Court's recent decision in ***Anwar Ali & Anr. vs. The State of Himachal Pradesh***¹¹:

“9. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in the case of *Suresh Chandra Bahri v. State of Bihar* 1995 Supp (1) SCC 80 that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in the case of Babu (*supra*)¹², absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. ...”

22. The prosecution has failed to establish any convincing motive for the appellant to commit the murder of her own child. The suggestion that the appellant killed her child because her husband visited village Katli for the last rites of his recently deceased father

¹¹ 2020 INSC 563.

¹² *Babu vs. State of Kerala*, (2010) 9 SCC 189

defies logic, given that she herself visited village Katli along with him and their child on 8th December, 2006. Moreover, such an extreme act runs completely contrary to the natural instinct of a mother of an infant child.

23. Based on the above analysis, we are of the view that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The alleged extra-judicial confessions suffer from serious infirmities and cannot be relied upon. The circumstantial evidence, too, does not form a complete chain conclusively pointing towards the guilt of the appellant.

24. In light of these findings, the Appeal is allowed. The conviction and sentence of the appellant under Section 302 of the IPC is set aside and the appellant is acquitted of the offence alleged against her. Since the appellant was already on bail, she be discharged from her bail bonds.

.....**J.**
(PRASHANT KUMAR MISHRA)

.....**J.**
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
AUGUST 20, 2025.