



2026:AHC:33438-DB

Reserved On :- 28.01.2026

Delivered On :- 16.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 83 of 2005

Raees

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)

: Amit Singh

Counsel for Respondent(s)

: Govt. Advocate

Court No. - 46

HON'BLE SIDDHARTH, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

(Delivered By Hon'ble Siddharth, J.)

1. Heard Ms. Zia Naz Zaidi, Advocate along with Mohammad Haddi Zaidi and Ms. Mubasshara Siddhiqui, learned counsels for the appellant and Sri Pawan Kumar Srivastava, learned A.G.A-Ist for the State and perused the trial court record.

2. The prosecution case, in brief, is that complainant, Mohd. Zabir, lodged an F.I.R at the police station that his niece, Noor Jahan, was married with accused, Raees, before 13 years of the incident and she has four children i.e., two sons and two daughters. On 30.08.2003, at about 05:00 a.m., he received information from village Dhakia Jat that Raees has murdered his niece, Noor Jahan and his three children. On this information, he along with his villagers and father of Noor Jahan reached the village Gajraula and enquired about the incident. The villagers told them that in the last night, accused, Raees along with his children was sleeping in the house as usual. On account of some talks, some altercation took place between husband and wife and accused, Raees, killed his wife, Noor Jahan and his three children i.e., Rukhsar, Mukeem and Savina, by stabbing knife. The only alive son of accused, Raees, is Azim aged about 5 years who told him that his father has killed his mother and three siblings. Their dead bodies are lying in the court yard of the house and accused, Raees, has fled away. This incident took place in the night of 29/30.08.2003 at about 1 o'clock. On this report, the case was registered against the accused.

3. The Investigating Officer conducted the investigation of the case and

prepared site-plan and other papers relating to investigation. He recorded statements of witnesses under Section 161 Cr.P.C. He also prepared inquest reports of the dead bodies of deceased further. Dr. D.K. Shukla, conducted Post mortem examination on the dead bodies of deceased persons were also conducted. After completing the entire investigation, investigating officer submitted the charge sheet against the accused.

4. Learned C.J.M., Moradabad committed the case to the court of Sessions for trial vide his order dated 14.01.2004.

5. Charge under Section 302 IPC was framed against the accused, Raees, by the trial court to which he pleaded not guilty and claimed to be tried.

6. The prosecution examined P.W.-1, Mohd. Zahir; P.W.-2, Azim; P.W.-3, Chhida; P.W.-4, Mehmood Hasan alias Nanhe; P.W.-5, Dr. P.K. Shukla and P.W.-6, S.S.I., Yatendra Babu Bhardwaj to prove the prosecution case.

7. As per post mortem examination report, paper no. Ext. Ka-2, conducted by P.W.-5, Dr. P.K. Shukla, on 30.08.2003, at 07:00 p.m., the following ante-mortem injuries were found on the person of deceased, Noor Jahan :-

(i) Incised wound size 13cm x 4 cm around the neck 2 cm above sternal notch and left clevicle part of head attached body to skin and muscle on right side of neck, all the structures, including arteries, vein trachea, oesophagus and vertebral column and muscles underlying the wound are lying cut through and through.

8. The aforesaid Doctor has also found the ante-mortem injuries on the person of deceased, Mukeem, the post mortem examination of which was conducted on 30.08.2003 at 07:25 p.m :-

(i) Incised wound size 11cm x 3cm in front and both right and left side of neck and head attached to body front of skin and muscles on back side of neck. All the muscles, oesophagus, veins, trachea and vertebral column and spinal cord lying cut through and through underlying the wound.

9. As per post mortem examination report of deceased, Rukhsar, prepared by the aforesaid doctor on 30.08.2003 at 08:10 p.m the following ante-mortem injuries were found on his person :-

(i) Incised wound size 8cm x 3cm in front of both sides of neck, it is 3 cm above sternal notch, spine, muscles, trachea, arteries and veins are lying cut through and through corresponding to the size of injury.

10. As per post mortem report of deceased, Savina, conducted by the aforesaid doctor on 30.08.2003, 07:50 p.m the following ante-mortem injuries were found on her person :-

(i) Incised wound size 7cm x 4cm all around the neck, 1 cm below both ear and chin in front and both sides of neck and head attached to body and part of skin and muscles on back side. All the structures including muscles, veins, trachea, vertebral column and spinal cord lying cut through and through at the side of wound.

11. In his statement recorded under Section 313 Cr.P.C., accused alleged false implication in the case due to enmity.

12. After considering the rival submissions, material on record of the trial court and the judgement and order passed by the trial court, we find that P.W.-1 and P.W.-2 are the witnesses of the fact and P.W.-3 and P.W.-4 are witnesses before whom extra judicial confessions were made by the appellant.

13. P.W.-1 is the informant of this case, who has claimed that he was informed that the murder of the wife of the appellant and her three children have been committed by the appellant. P.W.-1 could not name the person, who gave him information in his village, situated 8 km. away from the village of appellant, about the aforesaid murders. There is contradiction in the statements of P.W.1 and P.W.-2 with regard to the mode and manner of information given and received by P.W.-1, regarding the alleged incident. While P.W.1 claimed that he received the information through an unknown person at 5 a.m. that the murder of his niece, Noor Jahan and her three children has been committed between 12-1 hours in the intervening night of 29/30.8.2003.

14. P.W.-2, Ajeem, the surviving son of appellant stated in his cross examination before the trial court that Yunus, his Khalu (*Mausa*) informed P.W.1 on phone and called him to the village of the appellant, where his *Khalu*, Yunus also resided with his family. Therefore the statement of P.W.1 that he received information in his village from some unknown person does not seems to be correct.

15. P.W.-2, Ajeem, minor son of the appellant stated in his examination-in-chief that at the time of the murder of his mother, brother and sisters, he was

in his house and had hidden himself and after committing the murder of his mother, brother and sisters, his father left the house and then his *Khala*, wife of Yunus, came to his house and then he came out from hiding.

16. It is notable that P.W.-1 is the uncle of the deceased, Noor Jahan and her father Iliyas and mother were alive but they did not lodge any first information report against the appellant, their son-in-law. P.W.1 claimed that when he reached the place of incident his brother, Mohd. Iliyas, father of the deceased (Noor Jahan) and other brother, Shakeer Husain; Anisha, mother of Noor Jahan, nephew, etc., total 20 persons had reached the place of incident and the villagers gathered on the place of incident informed them that quarrel took place between appellant and his wife, thereafter appellant committed the alleged murders. During cross examination P.W.1 could not inform the name of even one such villager, who informed him that on the fateful night quarrel had taken place between the appellant and his wife. In cross examination P.W.-1 admitted that apart from father and mother of the deceased, Noor Jahan, her three brothers are also there but none of them lodged the first information report or stepped in the witness box to prove the case against the appellant.

17. It is clear from the statement of P.W.2 that in his examination-in-chief he has stated that he saw the incident from his own eyes, his mother, two sisters and a brother were murdered by his father by a knife (*Choori*) and he hid himself. When his *Khala* came, he came out of the hiding. In his cross examination, P.W.2 admitted that he is residing with P.W.1 and his wife in village *Dhalkiya* and P.W.1 provides him money for purchasing 'toffee' etc. and he is not studying. He obeys the direction of P.W.1 who has engaged a private counsel in this case. P.W.1 and his wife give him delicious food to eat and good clothes to wear. P.W.1 has directed him to give statement in the court as per his directions otherwise he will oust him from his house. He admitted before the court in his cross examination that P.W.1 took him to the house of private advocate and government advocate for tutoring him the statements and as he was tutored by the advocates he has given tutored statements before the court. He admitted that Yunus is his '*Khalu*' and lives with his wife, his *Khala*, but he does not know her name. Their house is situated at a distance of ten steps from his house. At the time of incident his mother raised alarm and more than 50 persons had gathered and Yunus and his wife also came. He admitted that he did not wept by going close to body of his mother. He admitted in his cross examination that his father

(appellant) sells *Busha* (Husk) as contractor in other district. He further submitted that it is correct that on the day of incident his father had gone to sell *Bhusa* (Husk) in tractor. After the incident he was informed on phone and he reached the house at about 9-10 a.m. on the next day of the incident where dead bodies were lying. His father wept on the dead bodies of the deceased and because he fell down and cuddled dead bodies while crying his cloths caught blood stains. When his father came, P.W.-1. was present there and abuses took place between them and P.W.-1, got his father arrested by police. He admitted that source of light mentioned by him as "*Dibiya*" on the place of incident was tutored by the advocate. He further stated in his cross examination his father was badly beaten by the police and his nails were plucked. He further admitted that P.W.1 was called by his *Khalu* on telephone and then he came to the village. He admitted that he had given false statement on tutoring of government advocate and P.W.1.

18. If the statement of P.W.2 is read with the statement of the appellant recorded under section 313 Cr.P.C., we find that in reply to question no.6, he has clearly stated that at the time of incident, he had gone to sell *Bhusa*, (Husk) outside the village. He also stated in reply to paragraph-14 that because of his enmity with P.W.1, he has been implicated in this case.

19. D.W.-1, Dr, Sunil Kumar, who was jail doctor, proved that he medically examined the appellant in jail on 2.9.2003 and found four injuries on his body:-

1. *Lacerated wound 1x 1/4 cm muscle deep on his forehead.*
2. *Contusion 17x 9 cm. on right leg towards the back side.*
3. *Contusion 19x 11 cm. on left leg back side .*
4. *Abrasions 1x1/2 cm. on both hands, with nails broken on 3 and 4 fingers.*

20. Doctor admitted that nails of 3rd and 4th fingers of the appellant could have been broken by pulling from some tool. The other injuries could have been caused by beating.

21. Irshad Ahmad, appeared as D.W.-2 and denied that he was witness of recovery of knife made allegedly on the pointing out of the appellant, therefore, recovery of knife on the pointing out of the appellant does not

inspires confidence of this court.

22. The falsity of statement of P.W.-6, investigating officer, is proved from the fact that he has stated that the appellant was never beaten in custody. He has also denied that nails of the appellant were plucked in police station. He admitted that appellant made confession of commission of crime after 1 - 1/4 hours of his arrest. His statement is in conflict with the injuries found on the person of appellant by jail doctor, D.W.-1, who proved that nails of appellant were pulled out.

23. P.W.-6, stated that appellant was found by him on 31.8.2003 but he could not prove memo of arrest before the court. The statements of the witnesses for recovery of knife, Chhida and Mehmood Hassan, were recorded on 24.10.2003, when recovery of knife on the pointing out of the appellant was made on 31.8.2003 itself. P.W.6 could not state the reason of delay in recording of the statements of witnesses regarding recovery of weapons on 24.10.2003. He did not recover any '*Dibia*'; from the place of incident and read with statement of P.W.2, there was no '*Dibia*' lighting the place of incident at the time of incident and P.W.2 has stated about '*Dibia*' on tutoring of government advocate. Therefore, we find that the time and place of arrest of the appellant and the recovery of knife on his pointing out are not credible and do not prove the prosecution case that appellant vanished after committing alleged offence in midnight.

24. P.W.-2 stated that his father (appellant) came to the house after getting telephonic information about the incident at 9 to 10 a.m. on the next day. Thereafter he quarreled with P.W.-1 and then P.W.-1 got his father arrested by the police. This explains the reason why police has not made the memo of arrest of the appellant.

25. We, further find that other evidence against the appellant, are in the form of statements of P.W.-3 and P.W.-4, who have claimed that appellant made extra judicial confessions before them regarding commission of murder of his wife and three children. They have stated that appellant confided with them that some men used to visit his house and his children informed him in this regard. Therefore, he has committed murder of his wife and three children. Both the witnesses stated that in the next morning of the incident, appellant went to them and informed about the incident and made extra judicial confessions before them.

26. We find that both the witnesses are residents of different village namely, Dakiya Peru Dilari and not of appellant's village, Gaujrula. The evidentiary value of extra judicial confession has been considered by the courts number of times and it has been found to be weak type of evidence which cannot be accepted without corroboration from other evidence. The extra judicial confession cannot be accepted if it suffered from material discrepancy or being inherently, improbable does not inspires confidence of court.

27. We further find that statements of P.W.-3 and P.W.-4 were recorded by the investigating officer after two months of the incident dated 29.8.2003 on 29.10.2003 whereof there was no explanation. Apex Court in the case of **Ramu Appa Mahapatra vs. The State of Maharashtra, in Criminal Appeal No. 608 of 2013** has dealt with the issue of extra judicial confession as follows:-

"18. In Sansar Chand vs. State of Rajasthan, this Court accepted the admissibility of extra-judicial confession and held that there is no absolute rule that an extra-judicial confession can never be the basis of an conviction although ordinarily an extra-judicial confession should be corroborated by some other material.

19. Evidentiary value of an extra-judicial confession was again examined in detail by this Court in Sahadevan vs. State of Tamil Nadu. That was also a case where conviction was based on extra-judicial confession. This Court held that in a case based on 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. That apart, in a 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. An extra-judicial confession, if voluntary and true and made in a fit state of mind can be relied upon by the court. However, 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.

19.1. This Court acknowledged that extra-judicial confession is a weak piece of evidence. Wherever the court intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and it corroborated by other prosecution evidence. If the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent, such evidence should not be considered. This Court held as follows :-

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.

19.2. Upon an in depth analysis of judicial precedents, this Court in *Sahadevan (supra)* summed up the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an 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."*

28. In view of consideration of judgment of Apex Court, we find that there is nothing in the statements of P.W.-3 and P.W.-4 as to how they were so close to the appellant that he confided them on the next morning that he has committed the murder of his wife and three children. P.W.-3 and P.W.-4 are also not any government authorities or respected or influential persons of the village, who could have saved the appellant. Therefore their statements lack credibility. Two month's delay in recording their statements by the police under section 161 Cr.P.C., also raises doubt about the veracity of their statements made before the court. Their over all conduct and their statements are doubtful and cannot be made basis of sustaining the conviction of the appellant.

29. Now, we came to the statement of P.W.-5, doctor who has opined that

injuries on the body of the deceased could have been caused by heavy sharp edged weapon, when the prosecution case is that appellant caused fatal injuries to the deceased by knife, which is not the heavy sharp edged weapon. The postmortem report of the deceased persons shows that all of them have suffered only one incised wound injury each on their necks. The force applied in effecting the solitary injuries to all the deceased is such that all the underlying structures of the neck including, trachea, oesophagus and even vertebral columns and underlying spinal cord got cut. The size of the wounds shows that fatal assault was made by some very heavy incised weapon which almost severed neck of the deceased from their bodies by cutting almost all the internal structures underlying the neck. Therefore, causing of such fatal injuries by ordinary knife, recovered on the pointing out of the appellant, does not sounds credible.

30. We have also found from the statement of P.W.1 that there was vacant land in front of the house of Mohd, Iliyas, brother of P.W.1 and father of deceased, Noor Jahan, which he had sold 6-7 years ago to one butcher of his village. He further stated that Iliyas was not having sufficient money to purchase the aforesaid land but denied that any quarrel took place between him and Iliyas wherein the appellant supported his father-in-law, Iliyas and beaten P.W.-1 and from that day he stopped visiting house of appellant, Raees. Despite his denial in his cross examination, he admitted that number of feast were organized by the appellant in his house but he did not attended any of them. The reason for not attending any feasts on the auspicious occasions in the house of appellant was not stated by him before the court. This proved that there was element of enmity between appellant and P.W.-1 uncle of the deceased, Noor Jahan and P.W.-2 admitted that his father and P.W.-1 quarreled when the dead body of his mother and siblings were lying in the house and abused each other. Thereafter, P.W.-1 got his father arrested by the police. This conduct of P.W.-1 considered with the fact that father, mother and three brothers of the deceased, Noor Jahan, were alive but neither lodged the First Information Report nor appeared in the witness box to prove the prosecution case make us disbelieve that P.W.-1, who lodged First Information Report against appellant was based on correct facts.

31. P.W.-2 has stated that his Khalu and Khala live close to his house and soon after the incident his Khala came to his house. His Khalu, Yunus, made phone call to P.W.-1 and informed him about the incident. However, neither Khala of P.W.-2 nor his Khalu either lodged the F.I.R or appeared as witness in trial to prove the prosecution

case.

32. Before concluding we record that it is a gruesome murder of a mother and her three children in most brutal manner but we are not convinced that prosecution evidence is such which conclusively implicates and proves that the offence was committed by none other than the appellant of this case. Hence the appellant deserves to be extended benefit of doubt.

33. Appellant is languishing in jail since last about 23 years. He is directed to be set free forthwith, if not wanted in any other case.

34. The Criminal Appeal is allowed.

35. Let the trial court record be returned to the trial court along with copy of this judgment.

36. Before parting with this case we feel that real punishment of appellant has not come to an end. His real ordeal will begin after he is released from jail. His parents and siblings may not be alive. His wife and three children have already died and whether his surviving son, P.W.-2, Ajeem, who must be now aged about 25-26 years now, will welcome his father to his house is also not certain. It is sad commentary on our criminal justice delivery system and requires introspection and real remedial measures like increasing number of judges, their supporting staff and infrastructure. There is not short cut to hard work required for deciding criminal appeals. Just holding conferences and meetings can never ameliorate the situation.

February 16, 2026
Rohit

(Jai Krishna Upadhyay,J.) (Siddharth,J.)