

SUPREME COURT OF INDIA**Bench: Justices Abhay S. Oka and Pankaj Mithal****Date of Decision: 8th November 2023**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1926 OF 2011**PRABHATBHAI AATABHAI DABHI ...APPELLANT(S)****VERSUS****STATE OF GUJARAT ...RESPONDENT(S)****Legislation:**

Section 302 of the Indian Penal Code (IPC)

Subject: Criminal appeal against conviction under Section 302 of IPC

for murder, involving alleged extra-judicial confession and recovery of an
axe as evidence.

Headnotes:

Extra-Judicial Confession – Doubt over Confession’s Credibility – Extra-
judicial confession to the brother and acquaintance of the deceased,
raising questions on its believability, leading to its rejection. The
improbability of an accused making a confession to close associates of
the deceased. [Paras 6-7]

Inconsistency in Prosecution's Case – Mismatch in Weapons and Blood

Group Evidence – Discrepancy between the weapon mentioned in the

confession (stick) and the weapon recovered (axe). Blood group on appellant's clothes not matching the deceased's blood group, contradicting prosecution's claim. [Paras 8-9]

Acquittal of Appellant – Failure to Establish Guilt Beyond Reasonable Doubt – The prosecution's inability to conclusively prove the appellant's guilt, leading to acquittal and cancellation of bail bonds. [Paras 10-11]

Decision – Appeal allowed, impugned judgments set aside, appellant acquitted of the alleged offence, and bail bonds cancelled. [Para 12]

Referred Cases: None.

J U D G M E N T Abhay S.Oka, J.

Heard the learned counsel appearing for the parties.

2. The appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code (for short "IPC"). The conviction of the appellant by the Sessions Court has been confirmed in appeal by the impugned judgment of the High Court.
3. We must refer to the case of the prosecution in brief. PW-2-Kalabhai, the brother of the deceased Hukabhai, is the first informant. PW-3 Ramabhai is from the same village in which the appellant and the deceased were residing. According to the case made out in the complaint, PW-1 was at the grocery shop of PW-2 with one Ratabhai. We may note here that date of the incident is 12th November, 1997. According to the prosecution case, the deceased-Hukabhai started proceeding towards his field at about 3.00 p.m. He was followed by the appellant-accused with a bamboo stick in his hand. The accused came

back near the shop around 6.30 p.m. with a stick in his hand. According to the prosecution, the appellant confessed before PW-2, PW-3 and one Ratabhai that he had assaulted the deceased with a stick.

4. The motive pleaded by the prosecution is that on 28th October, 1997, the appellant, Abhabhai and Bhembhai consumed liquor and a quarrel started amongst them. The Sarpanch lodged a complaint. In the said proceedings, the deceased took side of Abhabhai.
5. With the assistance of the learned counsel appearing for the parties, we have perused the notes of evidence and other documents on record. The prosecution has relied upon (a) extra judicial confession of the accused allegedly made before PW-2 and PW-3; (b) recovery of axe at the instance of the appellant-accused coupled with evidence of PW-5-Chanchalben who claimed that the same axe was taken away by the appellant from her house; and (c) blood stains were found on the clothes on the person of the appellant.
6. As far as the alleged extra judicial confession before PW-2 and PW-3 is concerned, we may note here that admittedly, PW-2 is the brother of the deceased. PW-3 is a close acquaintance of PW-2 and the deceased. It is not brought on record by the prosecution that the appellant had any relationship with both of them. Normally, an accused would make a confessional statement before a person in whom he has implicit faith. In the normal course, an accused would not make a confessional statement before the real brothers of the deceased.
7. When prosecution relies upon the evidence of extra judicial confession, normally, the Court will expect that the evidence of the persons before whom extra judicial confession is allegedly made, must be of sterling quality. In this case, it is very difficult to believe that the appellant-accused would make confession before the real brother and a close acquaintance of the deceased.

8. That is not the only reason for discarding the theory of extra judicial confession. We may note here that according to PW-2 and PW-3, the appellant went after the deceased, while he was carrying a bamboo stick. Their version is that the extra judicial confession was made by the appellant that he assaulted the deceased with the stick. But the case of the prosecution, as made out, is that at the instance of the appellant, an axe was recovered which was the weapon of assault. The stick was not recovered. According to the version of PW-2 and PW-3, the appellant went after the deceased with a stick in his hand and while returning, he was carrying the same stick.
9. The other circumstance against the appellant is that clothes on his person were stained with blood. However, we find from the Serology Report on record that the clothes on the person of the deceased were having blood stains of 'O' group. Three clothes recovered from the appellant were having blood stains. As regards the trouser of the appellant, the opinion was inconclusive. But as regards the other two items of clothes, it was found that the blood was of 'A' group. This militates against the case of the prosecution that the blood stains on the clothes of the appellant were of the blood of the deceased. The recovery of the axe at the instance of the appellant is of no relevance, as according to PW-2 and PW-3, the appellant was carrying a stick.
10. On all counts, the prosecution has failed to establish the guilt of the appellant beyond a reasonable doubt. We may note here that the appellant has already undergone incarceration for a period of more than 11 years and he was enlarged on bail by this Court on 14th October, 2011.
11. The impugned judgments are set aside. The appellant is acquitted of the offence alleged against him. The bail bonds of the appellant shall stand cancelled.
12. The appeal is accordingly allowed.

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