

**THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE MRS JUSTICE ANIS**

CRIMINAL APPEAL No.587 OF 2010

JUDGMENT:- (per Hon'ble Sri Justice K.C.Bhanu)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 23.02.2010, in Sessions Case No.357 of 2006 on the file of the VI Additional District and Sessions Judge (Fast Track Court), Nizamabad, whereunder and whereby, appellant herein/sole accused was found guilty of the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 (for short, "I.P.C.") and accordingly, convicted and sentenced to undergo simple imprisonment for life and to pay a fine of Rs.200/-, in default, to suffer simple imprisonment for a period of three months for the offence punishable under Section 302 I.P.C., and further sentenced to undergo simple imprisonment for a period of one year for the offence punishable under Section 201 I.P.C. Both the sentences were ordered to run concurrently.

02. The brief facts that are necessary for disposal of the present appeal may be stated as follows:

About 5 years ago, P.Vittal (P.W.7), engaged accused as agricultural servant to look after his agriculture works where the accused worked about 3 years. At that time, the accused developed illegal intimacy with one Chandravva (hereinafter referred to, as "the deceased") who is none other than the wife of P.W.7 and about two years prior to the incident the deceased eloped with the accused from Gouraram and stayed at Hanmandlu Lakdi for about two years. Later, the accused with an intention to contract second marriage, planned to murder the deceased. Accordingly, he left from Palem village to Gouraram village by convincing

the deceased and there he started working at one K.Maruthi. Enquiring about the accused, the deceased reached Banswada on 20.06.2006. When the accused came to know from the brother of the deceased that the deceased reached Banswada, he met her on the same day. The accused with an intention to kill the deceased, convinced her to work at Gouraram village and both of them proceeded to Hemlanaik thanda by bus. From there they started to village by walk and on their way at Gouraram village outskirts near the dilapidated agricultural well of one Ramreddy Patel, sheltered for night and according to his pre-plan, the accused killed the deceased by strangulating her with towel and threw her dead body into the dilapidated waterless agricultural well to screen his offence. Later, the accused confessed about the commission of offence before P.Ws.1 to 3, 5 and 6. On the report of P.W.1, the Sub Inspector of Police, Gandhari Police Station registered a case against the accused in Crime No.68 of 2006 of Gandhari Police Station for the offences punishable under Sections 302 and 201 of IPC and took up investigation. After completion of investigation and receipt of report, the Inspector of Police (P.W.11) filed charge sheet against the accused.

03. The trial Court framed the following charges against the accused:

“That you on 20-06-2006 committed the murder intentionally causing the death of Chandravva and thereby committed an offence punishable under Section 302 IPC and within my cognizance.

That you on the date, time and place of offence mentioned in the charge No.1 knowing that an offence of murder punishable with death or imprisonment for life has been committed caused, certain evidence connected with the said offence threw her dead body into a dilapidated waterless agricultural well to disappear with an intention to screen yourself from legal punishment and thereby committed an offence punishable under Section 201 IPC and within my cognizance.”

04. When the above charges were read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

05. To substantiate the charges, the prosecution examined P.Ws.1 to 11

and Exs.P-1 to P-9 were got marked besides case property – M.O.1.

06. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses. He denied the same. On behalf of the accused, none was examined and no documents were got marked.

07. The trial Court, after considering the evidence on record, particularly the extra-judicial confession said to have been made by the accused before P.Ws.1 to 3, accepted the evidence of the prosecution and found the accused guilty and accordingly, convicted and sentenced him, as stated supra. Challenging the same, the present appeal is filed by the accused.

08. Now the points for determination are:

“Whether the prosecution proved its case beyond all reasonable doubt against the appellant/sole accused of the offences punishable under Sections 302 and 201 I.P.C. and whether the judgment of the trial Court is correct, legal and proper or not?”

09. **POINTS:** Learned counsel for the appellant/sole accused, who was appointed as per the Regulations of the Telangana State Legal Services Authority, Hyderabad, contended that there is absolutely no motive for the accused to commit the murder of the deceased; that the extra-judicial confession made by the accused is not true and voluntary; that the evidence of P.Ws.1 to 3 consists of severe contradictions and therefore, it is not safe to place an implicit reliance on the evidence of P.Ws.1 to 3; that the mediator, who was present at the time of seizure of M.O.1, did not support the case of the prosecution; that the accused was falsely implicated in this case; that the possibility of the husband of the deceased to commit the murder cannot be ruled out, as the deceased eloped with the accused and therefore she prays to set aside the conviction and sentence recorded by the trial Court against the accused.

10. On the other hand, learned Public Prosecutor (Telangana State) appearing for the respondent contended that P.Ws.1 to 3 are disinterested witnesses to whom the accused gave confession; that there are some minor discrepancies in the evidence of P.Ws.1 to 3 with regard to the manner of attack, but the fact remains the death of the deceased was caused by the accused alone and the earliest report - Ex.P1 would clearly go to show that the accused gave extra-judicial confession to P.Ws.1 to 3 and there is no other reason for P.Ws.1 to 3 to foist a false case of this nature against the accused; that the medical evidence would clearly go to show that it is a case of homicidal death and the same is in corroboration with the confessional statement of the appellant and therefore, he prays to dismiss the appeal.

11. It is not in dispute that the accused was working as a farm servant prior to the incident under P.W.7. It is the case of the prosecution that P.W.7 married another woman and the accused eloped with the deceased. P.Ws.4, 5 and 6 are the mother and sisters of the deceased respectively. They testified that the deceased eloped with the accused and when she was found missing, they reported the incident to P.W.1.

When P.W.1 sent for the accused to the panchayath office and enquired him, he gave confessional statement stating that he strangled the deceased and threw the dead body into a well wherein no water was found.

12. There are no direct witnesses. The entire case rests upon circumstantial evidence. When a case rests upon circumstantial evidence, law is well settled that all the circumstances must unerringly point out the guilt towards the accused; that all the circumstances, if taken cumulatively, should form a chain so complete that within all human probability, the crime was committed by the accused and none else. On this aspect, it is pertinent to refer to a decision reported in ***Sharad Birdhichand Sarda Vs. State of Maharashtra***^[1] wherein it is held at para No.153 as under:

“A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahebrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made :

"certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

- (2) 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.
- (3) the circumstances should be of a conclusive nature and tendency.
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

13. Similarly, in ***Hanumanth Govind Nargundkar Vs. State of Madhya***

Pradesh^[2], it is held as under:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused”.

Bearing the above principles in mind, it has to be seen as to whether the accused committed the offence or not.

14. Since the entire case of the prosecution rests upon the extra-

judicial confession said to have been made by the accused to P.Ws.1 to 3, it has to be evaluated carefully and cautiously. Law is well settled that if the extra-judicial confession made by the accused is true and voluntary, then there is no bar to record a conviction.

15. It is also pertinent to refer to a decision in ***Mulkraj Vs. State of Bihar***^[3], it is held as under:

“An extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidence in convicting the accused. The confession will have to be proved just like any other fact. The value of the evidence as to the confession just like any other evidence, depends upon the veracity of the witness to whom it is made. It is true that the Court requires the witness to give the actual words used by the accused as nearly as possible, but it is not an invariable rule that the Court should not accept the evidence, if not the actual words but the substance were given. If the rule is inflexible that the Courts should insist only on the exact words, more often as not, this kind of evidence, sometimes most reliable and, useful, will have to be excluded; for, except perhaps in the case of a person of good memory, many witnesses cannot repeat the exact words of the accused. It is for the Court having regard to the credibility of the witness, his capacity to understand the language in which the accused made the confession, to accept the evidence or not”.

16. In ***State of Uttar Pradesh Vs. M.K. Anthony***^[4], it is held as under:

“There is neither any rule of law nor of prudence that evidence furnished by extra-judicial confession cannot be relied upon unless corroborated by some other credible evidence. The Courts have considered the evidence of extra-judicial confession a weak piece of evidence. (See Jagta V. State of Haryana (1975) 1 SCR 165 at P.170 : (AIR 1974 SC 1545 at P.1548) and State of Punjab V. Bhajan Singh (1975) 1 SCR 747 at P.751 : (AIR 1975 SC 258 at P.261). In Sahoo V. State of U.P. (1965) 3 SCR 86 : (AIR 1966 SC 40), it was held that ‘an extra-judicial confession may be an expression of conflict of emotion, a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime.’ Before evidence in this behalf is accepted, it must be established by cogent evidence what were the exact words used by the accused. The Court proceeded to state that even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as corroborative piece of evidence. In that case, the evidence was that after the commission of murder the accused was heard muttering to himself that he has finished the deceased. The High Court did not interfere with the conviction observing that the evidence of extra-judicial confession is corroborated by circumstantial evidence. However in Pyara Singh V. State of Punjab (1978) 1 SCR 597 : (AIR 1977 SC 2274), this Court observed that the law does not require that evidence of an extra-judicial confession should in all cases be corroborated. It thus appears that extra-judicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless

corroborated. If the evidence about extra-judicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test, on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the bases of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon.”

17. Bearing the above principles in mind, it has to be seen as to whether the extra-judicial confession said to have been made by the accused to P.Ws.1 to 3 is true and voluntary or not.

18. P.W.1 is the Sarpanch of Gouraram Village. P.Ws.2 and 3 are doing cultivation in the same village. On 28.06.2006, when P.Ws.1 to 3 were sitting at the Gram Panchayath Office, P.Ws.5 and 6 came and informed them that they came to know that the deceased was moving in the company of the accused and thereafter, the deceased was found missing, and hence, requested to send for the accused to enquire about the whereabouts of the deceased. Then, P.W.1 sent for the accused. When P.Ws.1 to 3 asked the accused about the whereabouts of the deceased, he confessed that he had beaten the deceased to death and threw the dead body into a dilapidated well of Ramreddy Patel. Thereafter, the accused took them to the well and from there, he ran away. P.Ws.1 to 3 has no personal enmity or grouse against the accused. If really the accused had not confessed about the manner of incident, they would not have testified about the accused giving confession and implicate him falsely. They are totally independent witnesses. Except suggesting that the accused did not give any confessional statement to them, nothing has been elicited to doubt the testimony of P.Ws.1 to 3. There is every reason for them to summon the accused to the panchayath office as P.Ws.5 and 6 complained to them about the missing of the deceased. There was a reason for them to summon the accused because the accused eloped with

the deceased prior to the incident. In such circumstances, there is every possibility for P.Ws.1 to 3 to summon the accused to the panchayath office. In the panchayath office, the accused voluntarily gave confessional statement that he killed the deceased and threw the dead body into a well. Some minor discrepancies have been pointed out by the learned counsel appearing for the appellant with regard to the manner of attack on the deceased. P.W.1 stated that the accused gave his confession stating that he throttled the deceased to death whereas P.W.2 stated that the accused had beaten the deceased to death and P.W.3 stated that he had killed the deceased and threw the dead body into the well. These discrepancies are trivial in nature because the incident had taken place in the month of June 2006. After lapse of three years, they testified about the incident. Therefore, some discrepancies are bound to occur even in the case of truthful witness, as he was made to depose about the confession after lapse of some time.

19. Further, P.W.1 set the criminal law into motion by lodging a complaint with the police on 28.06.2006 at 05.30 p.m. The earliest report would clearly go to show that the mother and sisters of the deceased came to P.W.1 and informed that the deceased was last seen alive in the company of the accused about ten days prior to the incident and thereafter, she was not seen and requested to enquire about the whereabouts of the deceased. Then, he called the accused to the panchayath office and enquired about the deceased. The accused confessed that on 21.06.2006, at about 03.30 a.m., he killed her by throttling and threw the dead body into an abandoned well in the agricultural fields of Ramreddy Patel. Thereupon, they took the accused to the well and found the dead body of the deceased. So, the earliest version clearly goes to show that the accused gave extra-judicial confession.

20. P.W.10 is the Doctor who conducted autopsy over the dead body of the deceased and found that the dead body was highly decomposed and only vertebra present. He opined that the deceased died due to asphyxia

due to strangulation. He issued Ex.P-7 - the post mortem report. So, the medical evidence is completely in corroboration with the evidence of P.W.1 and further, the statements of P.Ws. 2 and 3 are completely in support of the evidence of P.W.1. Since P.Ws.1 to 3 are not inimical to the accused and there was no other reason to implicate the accused falsely in a case of this nature, the trial Court rightly placed reliance on the evidence of P.Ws.1 to 3. Therefore, from the evidence of P.Ws.1 to 3, it is clear that the accused had throttled the neck of the deceased and after her death, the dead body was thrown into the well of Ramreddy Patel and thus, concealed the crime.

21. Coming to the aspect of seizure of M.O.1-towel, the seizure was effected in the presence of P.W.9. The mediator did not identify the towel allegedly seized from the possession of the accused. Even otherwise, the towel alike M.O.1 would be normally available with so many villagers and the said towel was not shown to the doctor so as to take his opinion as to whether that towel was used for strangulation or not. Therefore, the seizure of M.O.1 does not shown to be an incriminating circumstance against the accused.

22. Learned counsel for the appellant placed reliance on a decision reported in ***Prabhat alias Bhai Narayan Wagh and others Vs. State of***

Maharashtra^[5], wherein it is held at para No.11 as under:

“We find discrepancies in the version given at the very initial stage. The discrepancies and contradictions noticed by the trial Court were found to be minor in nature by the High Court, but in our view, there is serious flaw in the conduct of the case by the prosecution and the discrepancies and contradictions pointed out by the trial court cannot be ignored as minor. No explanation is forthcoming as to why Shobhana Parkar was not examined in this case. Even according to the prosecution, Shobhana Parkar had also received injuries on her arm when she tried to intervene. The prosecution story is that the deceased Sanjay Gaonkar ran to the house of Shobhana Parkar and that he was attacked just inside the door of the house of Shobhana Parkar. If that being so, in our view, Shobhana Parkar, who herself was injured and tried to intervene, was a crucial witness. Non-examination of Shobhana Parkar as well as the contradictory versions in Ext.28 and Ext.27 as well as the discrepancies and omissions pointed by the trial

Court, create a dent in the prosecution story.”

The above decision, which was rendered basing on the facts of that case, has not laid down any ratio. So, the above decision has no application to the facts of the present case.

23. As the contradictions pointed out by the learned counsel for the appellant in the evidence of P.Ws.1 to 3 are trivial in nature, there are no grounds to interfere with the judgment of the trial Court. Hence, the Criminal Appeal is liable to be dismissed.

24. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 23.02.2010, in Sessions Case No.357 of 2006 on the file of the VI Additional District and Sessions Judge (Fast Track Court), Nizamabad. Miscellaneous Petitions pending, if any, in this Criminal Appeal shall stand closed.

JUSTICE K.C.BHANU

JUSTICE ANIS

Date: 10.06.2015

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[\[1\]](#) AIR 1984 SC 1622

[\[2\]](#) AIR 1952 SC 343

[\[3\]](#) AIR 1959 SC 902

[\[4\]](#) A.I.R.1985 SC 48

[\[5\]](#) (2013) 10 SCC 391